Workmen's Compensation

BRIEF OF

F. W. WEGENAST

For the Canadian Manufacturers Association.

A BRIEF

ON

Workmen's Compensation

PRESENTED BY

F. W. WEGENAST,
Representing the Canadian Manufacturers Association.

Reprinted from the Interim Report of
SIR WILLIAM MEREDITH, Commissioner for the
Province of Ontario.

ISSUED BY THE CANADIAN MANUFACTURERS ASSOCIATION.

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CONTENTS OF BRIEF.

BRIEF OF F. W. WEGENAST, REPRESENTING THE CANADIAN MANUFACTURERS ASSOCIATION.

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INTRODUCTORY.

This brief is submitted as representing the official views of the Canadian Manufacturers' Association—a body representing some twenty-eight hundred manufacturing concerns and embracing in its membership between eighty and ninety per cent. of the manufacturing interests of the Dominion of Canada. The outlines of the Association's position were laid down in a report submitted by a special committee and unanimously adopted by the Executive Council of the Association on the 14th December, 1911. This brief is an amplification of the report with citations and quotations in support.

The literature upon the subject of workmen's compensation which has during the last few years reached an immense bulk, is rapidly increasing, and it is characteristic of the subject that the older literature rapidly loses value as experience in the different jurisdictions accumulates. While in this brief no attempt is made at exhaustiveness, an effort has been made to incorporate at least by reference the most important and recent of the productions.

It goes without saying that it has been sought to embody in the presentation the best that can be gathered from the systems of the various countries and jurisdictions. There is very little need, in fact very little excuse, for original thought in dealing with the subject. Every form of solution that could be suggested has been subjected to experiment in some or other jurisdiction and there is available a mass of information and experience which renders further experiment along many lines not only useless but indefensible. No proposition and no view upon the subject can be of any great value which is not founded upon an investigation of the different systems and which does not reckon with their results.

No effort has been made to prove that conditions under the existing law are unsatisfactory or that a change in the law is necessary.[1] This has been assumed. Even the assumption, however, is more or less superfluous, because, whatever view may be taken of existing conditions, the history of the subject in every other country leaves no room for doubt that some change will be made in the law of Ontario. This brief is, therefore, addressed entirely to the question of the form which such legislation should take. The brief has been prepared with specific reference to the Province of Ontario, but it has been kept in mind that the legislation adopted in recent years in seven of the other provinces of Canada, must, in the light of uniform experience in other jurisdictions, be regarded as of a temporary character only, and that the course of legislation in the other provinces will in all probability be influenced by whatever action is taken in Ontario. In fact the possibility has been kept in view of a homogeneous, if not a unified, scheme for the whole Dominion. This is a consummation theoretically attainable perhaps by Dominion legislation, but practically attainable probably in no other way than that indicated, namely, uniform provincial legislation.

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[1] As to this see Rep. Atlantic City Conference; Rep. Ohio Com., Pt. I., pp. I-cxiii, and appendices I and II; Rep. Que. Com.; Rep. Ill. Com.; Rep. N. J. Com.; Rep. Wash. Com.; Rep. Fed. Com. U. S.; Rep. Mich. Com.

CONDENSED SUMMARY OF BRIEF.

Statement of Principles.

In framing a system of workmen's compensation, the following principles should, it is submitted, be kept in view and so far as possible observed.

First: For reasons both humanitarian and economic the prevention of accidents should be a prime consideration in any scheme of workmen's compensation, and no system can be satisfactory which will not tend to produce the maximum of effort and result in conserving the life, health, and industrial efficiency of the workman.

Second: Relief should be provided in every case of injury arising out of industrial accident. Such relief should not be contingent upon proof of fault on the part of the employer, but gross carelessness, drunkenness, or intentional wrong on the part of the workman should be penalized in some way.

Third: The system of relief should be adapted to cover wage-workers in every industry or calling involving any occupational risk, and should not be confined to such industries as railroading, manufacturing, building, etc.

Fourth: The relief should be as far as practicable by way of substitution for the wages of which the injured workman and his dependants are deprived by the injury. It should, as a rule, be periodical and not in a lump sum.

Fifth: The relief should be certain. It should not depend upon the continued solvency of the employer in whose service the injury was sustained.

Sixth: The amount of compensation should be definite and ascertainable both to the workman and to the employer. The system should entirely displace the present method of compensation by an action for damages, and the employer should not be subjected to any further or other liability except in cases of gross carelessness or intentional wrong on the part of the employer.

Seventh: The funds for relief should be provided by joint contributions from employers, workmen, and the province. Employers and workmen should pay in such proportions as represent the number of accidents occurring by reason of the hazard of the industry and the fault of the employer on the one hand and the fault of the workman on the other. The province should contribute an amount representing approximately the cost of administration.

Eighth: The system of relief should be such as to secure in its administration a maximum of efficiency and economy, and as large a proportion as possible of the money contributed should be actually paid out in compensation.

Ninth: The procedure for the adjustment of claims should be as far as possible dissociated from the regular courts of law. It should be simple and calculated to involve in its operation a minimum of friction between employer and employee.

Tenth: The system of compensation should be directly associated with a system of inspection with a view to the prevention of accidents and a system of prompt and expert medical attendance to mitigate the effect of the injuries.

Eleventh: The system should be such as to secure as liberal a measure of relief as possible without undue strain upon industry.

Twelfth: The system should be such as to afford some promise of permanency.

Analysis of Different Systems of Workmen's Compensation.

Practically all workmen's compensation legislation is an effort to embody in some form and in some degree the second of the principles above laid down, namely, that a wage-worker should receive compensation or relief in case of injury occurring in the course of his employment, regardless of questions of fault on the part of his employer or contributory fault on the part of the workman. This has been called the principle of "professional risk."[1] It is based upon the theory that the cost of human wear and tear should be thrown largely, if not wholly, upon the industry and included in the price charged to the consumer for the product of the industry. To what extent this theory is equitable and economically sound, and to what extent it conflicts with the legal doctrine that no man should be responsible for something not his fault need not be discussed here. The theory is the basis of all workmen's compensation legislation.

The different compensation systems of the world exhibit three distinct methods of applying the theory of professional risk. These methods may respectively be termed the individual liability method, the collective liability method, and the state liability or state insurance method. Every system in the world can be classified under one or other of these heads.

(*a*) *Individual Liability*: Under an individual liability system the obligation to compensate workmen is thrown upon the individual employer as an element of the relationship of employer and employee. The law includes a term in every contract of employment by which the employer assumes an obligation more or less extensive, to indemnify the workman for injuries received in the course of, or in connection with, the employment. The injured employee looks for his relief to the employer, who thus becomes an individual insurer of the workman against accidents. The principle of individual liability is illustrated in the English Workmen's Compensation Act and in the Acts in force in some of the provinces of Canada. Under these Acts employers are required, regardless to a large extent of questions of fault, to compensate their workmen for injuries arising out of, or in the course of, the employment. Employers are of course permitted and encouraged to insure themselves against the liability by some form of insurance, but the initial liability rests upon the individual employer and the insurance effected is uniformly for the purpose of protecting the employer against this liability and not for the purpose of insuring the workman against accidents.[2]

(*b*) *Collective Liability*: Under this method the liability to compensate the workman is thrown upon employers *collectively* in groups, according to the hazard of the industry. Employers are encouraged or compelled to combine in associations for the purpose of insuring their workmen against accidents and providing the necessary funds. The injured workman looks for his compensation, not to the individual employer, but to the association or the fund. The principle of collective liability is illustrated in the German system, under which employers are grouped by industries under state compulsion and supervision, and are required to provide funds for compensation or relief for the injuries occurring in their respective groups. The collective liability system has been adopted in some form by the

[1] See Walton, p. 22; and see post, p. 44, for further discussion.

[2] See further, post, p. 58, for distinction between accident insurance and employers' liability insurance.

majority of the countries of Europe and some of the States of the American Union, but the German system being the oldest and the most elaborately and scientifically developed is usually cited as the type.

(*c*) *State Liability*: Under this method the state itself assumes the obligation to pay compensation, the cost being levied upon employers, or employers and workmen, through the agency of a state insurance department. The workman looks for his compensation directly to the state department and the compensation is provided out of a fund levied in the form of insurance premiums upon the pay roll of industries. This method is illustrated in the Act recently adopted by the State of Washington.[1]

The method of individual liability has been pronounced with singular unanimity by those who have investigated the operation of the different systems as a failure.[2] It involves the violation of almost all of the twelve principles above laid down as representing the chief elements of a satisfactory compensation system. The individual liability systems have not tended to any appreciable degree to reduce the number of industrial accidents or to conserve the life, health and efficiency of the workman. They operate with particular hardship upon small employers and older and partially disabled workmen. They cannot be well operated so as to secure periodical payments as opposed to lump sum payments of compensation. They do not afford any assurance that the compensation payments will be made, or continue to be made, there being no guarantee of solvency on the part of those charged with payment. They have proven wasteful in the extreme, a large percentage of the money paid out in contributions by way of employers' liability insurance premiums being taken up by commissions, expenses of litigations, profits, etc. The workman is obliged to resort to legal or quasi-legal process to enforce his claim against the employer. The settlement of each claim involves a direct contest between workman and employer, the latter being supported by the employers' liability insurance company with its superior facilities for contesting claims. The individual liability systems represent the greatest and most direct strain upon industry. They are admitted by nearly all observers to represent merely a stage in the development of a satisfactory compensation system and involve in the meantime unsatisfactory relations between employers and workmen and unsatisfactory economic conditions to the community at large.

The collective liability method as applied in Germany and other countries of Europe, as well as some of the American States, is generally regarded as a success in its practical working out. The systems of these jurisdictions are found to embody in a large measure the elements above outlined as constituting a satisfactory compensation system. The type system, that of Germany, is the outstanding example of a successful solution of the problem; and criticisms upon it are directed almost solely to defects in the details and administration of the system.[3]

The state insurance system as applied in the State of Washington and other states as well as a number of other European countries, has the approval of a large majority of the investigators and writers upon the subject. Constitutional

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[1] It has been pointed out that the Washington system is more correctly described as a system of collective insurance under state administration, post, p. 77.

[2] See F. & D., 14; S. & E., 250; Rep. Fed. Com. U.S., 281; Rep. Ohio Com., Pt. I., p. 16; and post, p. 44, for full discussion.

[3] See post, p. 86.

and other practical difficulties have interfered with the introduction of such a system in many jurisdictions where it was otherwise regarded as desirable.[1] The experience of those jurisdictions which have adopted the system has called forth enthusiastic commendation from employers and workmen as well as the general public, and has given every reason to believe that such a system affords a satisfactory solution of the problem.[2]

The greatest difficulty in the way of the introduction of an Act like that of the State of Washington is the immediate additional expense to the employer represented by a probable rise of from 100 to 1,000 per cent. over the cost under existing conditions. Most large employers cover their risk under the present laws by employers' liability insurance. While the rates for this insurance are very high relatively to the benefits conferred by it upon injured employees, the introduction of a system like that of Washington would involve an additional expense to employers representing a considerable disturbance of economic conditions to the prejudice of both employers and workmen. The same result would of course follow the introduction of an individual liability system such as that of England, in which latter case the expense of conferring corresponding benefits would be much larger owing to the large percentage of waste.[3]

There is a plan under which a collective or state insurance system could be established at an immediate annual cost not greater than, and in fact in many industries considerably less than, that of the present liability insurance rates. This plan may be called the current cost plan.[4] Under it instead of capitalizing the periodical payments due to the injured workman or his dependants and setting aside at the time of the accident a lump sum to provide for all future payments, only the current cost of meeting the annual payments would be assessed each year with a small margin for an emergency reserve fund. The annual assessments would increase as the number of dependants increased, and the annual rate would reach its maximum only after a period of twenty-five or thirty years. This was the actuarial plan adopted in Germany.[5] It represents a minimum strain upon present industry and does not involve the shock to the economic system which would be incidental to the adoption of an extensive scheme of immediate capitalization.

Recommendations.

We recommend the establishment of either a collective liability or a state insurance system. An individual liability system will not be acceptable to the manufacturing interests of the province.

We are prepared to lend every assistance to the organization of an independent, non-state, collective system, but we believe that under all the circumstances the most economical and satisfactory plan for the Province of Ontario is a collective system under provincial administration and control.

We recommend the creation of an independent, non-political, provincial insurance department administered by a Board of three commissioners. This Board should provide for the payment of all claims for compensation out of a fund to

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[1] See Rep. Minn. Com., 154.
[2] See post, p. 49.
[3] See post, p. 60.
[4] See post, p. 63.
[5] See article by Dr. Zacher, in "Handwörterbuch der Staatswissenschaften," Vol. VIII. p. 65.

be raised by premiums levied upon the pay-roll of industries classified according to hazard. The Board should be vested with full jurisdiction to adjust all claims for compensation upon sworn reports of the different parties interested. It should have power to take evidence, to make independent investigations, and to re-hear and re-adjust, its decisions being final upon questions of fact and subject to appeal only in questions of law.

The Board should also have power to enforce preventive regulations, and provision should be made for the advisory co-operation of representatives of different classes of industries in the framing of such regulations. The Board should also have charge of the adjustment of insurance rates and the classification of industries.

The annual assessments of insurance premiums should be levied upon the basis of the current cost of compensation payments with a margin for an emergency fund. A percentage of the premium rates representing the proportion of accidents due to the fault of the workman should be chargeable at the option of employers, and upon due notice, to the workmen, and deducted by employers from the wages of the workmen.

DISCUSSION OF PRINCIPLES.

In the following pages the principles and recommendations given in outline above are briefly discussed. The views presented and the conclusions drawn are in every case supported by evidence and expert opinion representing the experience of other jurisdictions. It is considered of the utmost importance that any legislation adopted should avoid a repetition of the mistakes and weaknesses of other systems. Fortunately the legislatures of Canada are not subject to constitutional restrictions corresponding to those which hamper some jurisdictions in dealing with the subject. There is therefore every reason why the system adopted by the Province of Ontario should represent the accumulated experience of other jurisdictions as well as the wisdom and ingenuity of our own.

DISCUSSION OF PRINCIPLES.[1]

First: For reasons both humanitarian and economic the prevention of accidents should be a prime consideration in any scheme of workmen's compensation, and no system can be satisfactory which will not tend to produce the maximum of effort and result in conserving the life, health and industrial efficiency of the workman.

This principle involves an immediate departure from the older legal theories of employers' liability for injuries to workmen. The question of accident prevention must be considered one of paramount importance in relation to a workmen's compensation system because of the fact that the different systems of compensation vastly differ in their effect in inducing preventive activity and care on the part of the employer and employee. In its older legal aspect workmen's compensation was largely, if not wholly, a matter of making good by a money payment of damages, for injuries sustained by the workman[2]. In its modern economic aspect the question of conserving industrial efficiency by preventing accidents and mitigating their effect is a vital, if not the most vital consideration[3].

Of the possibility of a reduction in the industrial accident rate there is not the slightest doubt. Estimates and statistics point to a possible saving of as high as fifty per cent. in the industrial accident rate by systematic and scientific methods[4]. The theory of those who who advocate an individual liability system is that by throwing the burden of accidents directly and heavily upon the individual employer he will be induced to adopt means of prevention.[5] But there can no longer be any doubt as to the futility of a system of individual liability as a means of inducing efficient preventive activity. While it may have been one of the objects in the minds of the framers of liabililty systems such as that of the Chamberlain Act of 1880 in England to reduce the number of accidents by penalizing the employer with the increased liability, experience under these systems has not justified any such expectation, and later observers have in fact failed to give these systems credit for even the purpose of reducing the number of accidents. Thus the Commissioners of the National Association of Manufacturers say,[6] "the British policy bears no relation to accident prevention," and of the Act of 1897 the Parliamentary Committee reporting in 1904 said,[7] "no evidence has been brought before us which enables us to find that any great improvement in the direction of safety is to be placed to the credit of this Act. Indeed some of the evidence points in the opposite direction." While there appears to have been on the whole, since the introduction of the English Workmen's Com-

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[1] Compare enunciation of principles, S. & E., 28; and Rep. Mich. Com., 33.

[2] See statement of J. A. Emery, Rep. Fed. Com. U.S., 1088.

[3] F. & D., 140; S. & E., 11, 20, 128, 277. Art., by Louis Brandeis, "Outlook," June 10th, 1911, post, p. 74; Bulletin 78, U.S. Bur. Lab., 458; Rep. Fed. Com. U.S., 764.

[4] See also art., by Fredk L. Hoffman, Bulletin 78 U.S., Bur. Lab., p. 458; S. & E., pp. 66, 99, 314; also Rep. Fed. Com. U.S., 668, also statement of M. M. Dawson, Rep. Fed. Com. U.S., 104-5.

[5] This theory was pushed to its logical conclusion in a statement before the Federal Commission of the United States as remarkable for cogency of facts and quotations, as for confusion of logic and terminology. The witness in question advocated a system of drastic employers' liability, with prohibition of liability insurance, claiming that to allow the employer to insure was to ward off the incentive of preventive care.

[6] S. & E., 11.

[7] Cd. 2208, pp. 22, 23.

pensation Act, some diminution in the number of industrial accidents, the writers and investigators concur in refusing to credit this to the system of compensation established by the Act.[1]

On the other hand the collective liability systems have to their credit a marked success in inducing systematic effort in the matter of accident prevention. The German system with its elaborate statistics exhibits perhaps the most striking results but a corresponding measure of success has attended the operation of other collective systems. There is absolute unanimity amongst the writers and investigators in ascribing to the German system an immense superiority over the English system in reducing the industrial accident rate;[2] and the success of the German system is due very largely to the co-operative effort evoked by the classified organization of employers.

There is every reason to anticipate for the Act of the State of Washington a similar measure of success in preventing the occurrence of accidents.[3] The explosion in the Chehalis Powder works[4] soon after the Washington Act was brought into force serves to illustrate the probable effect of the Washington system. The accident had occurred in one of the explosives works of the State and was due largely to the use of an ingredient in the manufacture of powder which increased the hazard and which the other powder plants for this reason did not employ. The accident resulted in compensation claims amounting to over $10,000, which amount is of course to be borne by the manufacturers of explosives collectively. It needs no argument to demonstrate the probability that the influence of those manufacturers of explosives who do not employ the dangerous ingredient will be exerted to have its use discontinued.

There is every reason to believe that results similar to those in Germany would be attained in this province under the proposed system of assessing employers in groups. If, as proposed, facilities are afforded for the formation of employers' associations, these will beyond doubt have a large influence in reducing the accident rate by making rules, standardizing machinery and otherwise promoting safety;[5] but even were such facilities omitted employers would probably find means, within the different groups, of combining for co-operative effort in accident prevention.

Another factor in the matter of accident prevention, one which does not appear on a casual examination to have any bearing upon it, but which has been found to be in fact of the greatest importance, is the question of the actuarial plan adopted in compensation insurance. The subject is discussed in succeeding pages,[6] but it should be observed here that one of the greatest means of inducing preventive activity is the rapid rise in insurance rates involved in the current cost plan of insurance.

It is submitted that the greatest possible care should be given to the selection of those features of other systems which have been found to exercise any influence in promoting the prevention of accidents, and that other considerations must wherever necessary give way to this feature.

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[1] Rep. Fed. Com. U.S., 116.

[2] S. & E., 99; Rep. Fed. Com. U.S., 104, 1,432; F. & D., 138; Cd. 2,458, p. 33.

[3] See Interim Rep. Ont. Com., 175, and post, p. 84.

[4] See account of accident, post, p. 78; see also correspondence, with reference to Chehalis explosion, post, p. 79.

[5] S. & E., 285. See Interim Rep. Ont. Com. 328, 344.

[6] See post, p. 63.

Second: *Relief should be provided in every case of injury arising out of industrial accident. Such relief should not be contingent upon proof of fault on the part of the employer, but gross carelessness, drunkenness or intentional wrong on the part of the workman should be penalized in some way.*

Under the older legal systems, continental as well as English, the ability of a workman to recover damages for injury depended upon his ability to prove the injury to have been caused by the fault, or, to use the technical term of English law, the *negligence* of the employer. The rule as to the liability of the employer was no different from the general rule applicable to all persons, namely, that a man should not be held answerable in damages for something not his fault. Attempts have been made to reconcile the modern doctrines of workmen's compensation with this older principle. It has been implied, if not expressly urged, that the employer, having brought into existence and operation modern industrial appliances and methods, has created conditions which should be imputed to his fault, and that he should therefore be held responsible for the results of these conditions.[1] This view assumes two untenable propositions, namely, that modern industrial conditions are created by, and for the exclusive benefit of, employers, and that industrial accidents are due entirely to these conditions.

The fact is that the modern theories of workmen's compensation are based upon grounds of practical expediency and not upon notions of abstract justice. The principal grounds are: In the first place, the employer is considered to be in a position to do for the workman what the workman cannot, or will not, do for himself, namely, insure the workman against accidents; for even with an increase in wages corresponding to the insurance premium necessary to insure himself, the improvidence of the workman would preclude any hope of his voluntarily assuming the burden. In the second place, the employer being in the position of *entrepreneur* is considered to have facilities for throwing the cost of compensation upon the product and to collect it from the consumer.[2] To these two considerations there may be added a third, namely, that the money wasted in disputes over questions of fault in individual cases would go a long way towards providing for compensation where no fault lay against the employer.

Without detracting from the weight of these considerations it may be pointed out that they do not stand alone or unqualified and that the considerations of justice which formerly governed are not abrogated. It is no more just now than formerly that an individual employer should be held responsible for something not his fault, nor that a workman should receive damages for injuries due to his own fault. It is neither just nor expedient that a workman should not have his own carelessness brought home to him. And there is a further consideration of expediency requiring the enlistment of the workmen's pecuniary interest in preventing the occurrence of injuries. In addition to this, practical expediency, as well as justice, demand that the burden thrown upon the employer should be borne by employers collectively and not individually. With regard also to the

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[1] Under a rule analogous to that in the old case of Rylands v. Fletcher, L.R. 3 H.L., 330, so, *e.g.*, Mr. Asquith, as Home Secreary, in 1893, used the following words: "When a person, on his own responsibility, and for his own profit, sets in motion agencies which create risks for others, he ought to be civilly responsible for the consequences of what he does." And see similar argument, Rep. Fed. Com. U.S., 197. This theory was the basis of some of the earlier legislation of Germany (*e.g.*, The Prussian Railway Law, 1838), but was soon abandoned.

[2] See F. & D., 8; Rep. Fed. Com. U.S., 1088.

theory that, as in the case of broken down and worn out machinery, so in the case of the injury or death of workmen, the loss should be borne by the employer and added to the cost of production as incidental to modern industrial methods, it may be observed that the analogy may be easily overdrawn. The workman is not a machine. An injured or worn out machine may be replaced or repaired at a cost that can in most cases be estimated with precision and the machine in its injured state is still the property of the employer and may be sold and replaced by another, for the purchase of which the markets of the world are open. The freedom of contract and volition on the part of the workman constitutes a vital difference between him and the inanimate agencies of production.

The "professional risk" theory imputes, in reality, to the relationship of employer and employee obligations and rights for which the common law affords no real analogy. These rights and obligations are social in their nature and involve considerations in which the community at large is vitally interested. A workmen's compensation system involves the merging of the workmen's private right of action against the employer in the larger right of the general public to have the injured workman taken care of; or, in another aspect, it merges the private obligation of the employer to compensate the workman in the larger obligation to the public of keeping the workman from dependence on charity.[1]

The socialistic element in workmen's compensation legislation is, of course, freely recognized.[2] It was recognized by Bismarck in introducing the German Act of 1880[3] and Joseph Chamberlain referring to the English Act of 1884, said: "The Poor-law is socialism. The Education Act is socialism. The greater part of municipal work is socialism, and every kindly act of legislation by which the community has sought to discharge its responsibilities and its obligations to the poor is socialism, but it is none the worse for that."[4]

The great defect in the individual liability system is that it seeks to operate a socialistic doctrine with inadequate individualistic machinery. Whatever economic arguments may be advanced for a system of individual liability it is and will forever remain unjust that an individual employer should be responsible for injuries occasioned to a workman by the workman's own negligence, or the negligence of another than the employer. The rule of contributory negligence and the fellow servant rule as embodied in the common law of England are not unjust. If B., an employee of A., is injured by his own negligence or by the negligence of C., a fellow employee, there is no shadow of a foundation in justice for a claim against A. for damages. In order to see the elementary relationship A., B. and C. respectively should be considered as persons of coordinate rank, say three journeymen carpenters, but the relationship of the parties cannot and ought not to be considered different if A. is a wealthy corporation. The disease aimed at by compensation laws is an economic condition, not a legal wrong, and an individual liability law is an attempt to do an economic right by doing a legal wrong, an attempt which experience in many countries has proven unwise even as a temporary expedient.

The present English Act represents the logical evolution of the principle,

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[1] See statement of R. J. Cary, Rep. Fed. Com. U.S., 139; see also Laband, Droit Public de L'Empire Allemand, IV.

[2] See Brief of Carman F. Randolph, Rep. Fed. Com. U.S., 1428.

[3] See Rep. Fed. Com. U.S., 952.

[4] Speech at Warrington on Sept. 8, 1885. See F. & D., 140, for answers to criticisms against German system as socialistic.

adopted in the Act of 1880, of securing compensation for workmen by an extension of the personal liability of the employer. The present English Workmen's Compensation Act is still in essence an employers' liability act and is in line with the older legislation of many other countries, including Germany.

These older laws were directed towards the wiping out of the so-called defences of contributory negligence, common employment and assumed risk which stood in the way of the workman's recovering compensation under the common law, and thus extending the liability of the employer. Experience soon showed that with these defences abrogated a large percentage of industrial accidents still remained uncompensated as being purely accidental and not attributable to fault on the part of anyone.[1] Speaking of the earlier German law of 1871, Dr. Zacher says: "The law did not have the desired effect; it left the vast majority of the accidents (those occurring through the hazard of the employment, or fault of the workman or fellow-workman) uncompensated as before."[2] The Ohio Commission also found that "statistical investigations show that less than twenty per cent. of the workingmen injured and killed have a cause of action at law; that is, in less than twenty per cent. of the cases is the course of injury attributable to the negligence of the employer"[3] and that in more than 80 per cent. of all accidents to workingmen there is no remedy at all. In many jurisdictions there still remains a nominal reservation against the workman in cases of gross carelessness or wilful misconduct—a reservation which amounts to little or nothing in practice[4] but is the last vestige of the older common law theory.

Another form of legislation in vogue in some jurisdictions, involving a further violation of principles of natural justice, was directed towards shifting the burden of proof from employee to employer, leaving it to the latter to disprove fault. There is, however, a marked tendency to disregard entirely any contributory cause on the part of the workman where the effect of such a reservation would be to deprive innocent dependents of compensation, the pervading thought in thus sweeping into the net of compensation cases both deserving and undeserving being that the money which would be consumed in litigation and otherwise, over the determination whether in particular cases the compensation should or should not be paid, would suffice to meet the undeserving cases.

With the qualifications above mentioned, therefore, it is submitted that the principle of compensating regardless of fault should be recognized as the basis of the system. Having laid down the general principle, however, it is necessary to consider what means are open to prevent an abuse of the system by carelessness or self-inflicted injury. Most systems withhold or reduce the compensation in cases of injury arising out of intentional wrong-doing or other serious misconduct. There is no doubt that misconduct on the part of a workman endangering his own or other workmen's safety should be brought home to him individually, and this, perhaps, whether an injury has been occasioned to the workman or not. Whether, if the workman is injured in such a case, the compensation should be wholly or partially withheld might be left by the Act for the proposed Commission to decide in individual cases. Attention may be called to the provision of the Act of the State of Washington under which for removing guards on machinery, etc., the compensation is reduced by ten per cent.

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[1] Interim Rep. Ont. Com., 336.

[2] Art. of Dr. Zacher, in "Handwörterbuch der Staatswissenschaften," Jena, 1911, Vol. VIII.

[3] Rep. Ohio Com., Pt. I., p. lxxxiii.

[4] S. & E., 203; Cd. 2,208, p. 65; F. & D., 11.

Third: The system of relief should be adapted to cover wage workers in every industry or calling involving any occupational risk, and should not be confined to such industries as railroading, manufacturing, building, etc.

The experience of other countries gives every reason to anticipate that any system of workmen's compensation that may be adopted will be ultimately and inevitably extended to include all classes of wage-workers. The English Act of 1897, which originally applied only to seven groups of industries considered to be particularly hazardous, has been gradually extended until practically all occupations are now covered; although the system established by the Act was very ill-adapted for such extension. A similar development marked the history of the German law, which now covers all occupations. No reason can, of course, be adduced except that of temporary inexpediency, for excluding wage-workers in such industries as agriculture and horticulture. The wage-worker who loses an arm in a farm machine is as much entitled, equitably and economically, to compensation as the workman who loses an arm in a machine in a factory. Statistics also show that farming is one of the most hazardous of all industries. In Germany, where general conditions differ very little from those of this country either in the relative hazard or in the proportion of persons respectively engaged in the different occupations, between 40 and 45 per cent. of the total number of accidents occur in the agricultural and horticultural industries. In the schedules of accident insurance companies in this country and in the United States, farmers are classed as extra-hazardous risks. Similar observations might be made with respect to such industries as lumbering and fishing, although these occupations do not engage anything like a similar proportion of workmen. It is a matter for careful consideration that any system that may be adopted shall be one that will fairly lend itself for ultimate extension to all classes of industries.

At the outset, and in order to obviate too great complexity in the inception of the system, it might be well to include in the system only certain classes of employers and only employers of a certain stated number of persons, say three or five; but the system should be so framed as to permit readily of extension to the smaller employers and to all occupations.

Fourth: The relief should be as far as practicable by way of substitution for the wages of which the injured workman and his dependents are deprived by the injury. It should as a rule be periodical and not in a lump sum.

The consensus of opinion amongst authorities on workmen's compensation is in favor of this principle.[1] Wage-workers are, as a class, unaccustomed to the handling of large sums of money and where compensation is paid in lump sums it is liable to be dissipated through extravagance or improvident investment.[2] Experience in the United States and under the present English Act has shown also that where compensation is paid in lump sums a much larger proportion is consumed in legal expenses than would be under a system of periodical payments.[3] The prospect of a lump sum payment as the probable result of an acci-

[1] See F. & D., 23; 24th Rep. U.S. Bur. Lab., 40; Rep. Fed. Com. U.S., 887, 943; Cd. 2208, pp. 68, 86; Cd. 2458, p. 25.

[2] The Fabian Society suggests that Compensation should always be in the form of pensions; because of the risk of investment by workmen. Prof. Mavor's Rep. (1900), p. 25; see also Rep. Conf. Com., 64; Cd. 2208, p. 87; Rep. Fed. Com. U.S., 111, 279.

[3] Rep. Conf. Com., 65. Bulletin des Assurances Sociales (1910), Pt. I., p. 136.

dent is also a larger inducement to self-inflicted injury than the periodical payment of a proportion of wages. Experience has, in fact, shown that most of the proven cases of self-injury have been occasioned by the need or desire for an immediate sum not available by way of wages. It has been urged also that the payment of the lump sum creates an inducement for the workman to live in idleness while his funds last instead of going back to work and earning what he can.[1] Finally, except in the case of the death of an injured workman it is impossible to estimate accurately the extent of the injury. The fixing of compensation by arbitrary assessment on the basis of an anticipated period of incapacity leaves room for the danger that the period has been under-estimated, and the danger, equally to be guarded against, that it has been over-estimated. Both these difficulties are obviated by a system of periodical payments. Even the English Act provides for periodical payments in certain cases. Where injuries result in disablement the compensation is in the form of weekly payments on the basis of half the impairment of the earning capacity. Provision is made, however, for the commutation of these weekly payments, and as a matter of fact they are in most cases commuted.[2] This, of course, nullifies to a large extent the intention of the Act, but some provision for commutation is almost indispensable in an individual liability system since the obligation of paying pensions for a period of years should create an intolerable burden for most employers[3] and add to the insecurity of the workman. This latter feature was recognized in England by making provision for the purchase of Government annuities in commutation of periodical compensation payments, which provision in itself constitutes the embryo of a state insurance system, and the inclusion of the principle of periodical payments even in its attenuated form in the English Act shows how far the English Act has departed from the "wergeld" theory under which the damages payable for injuries were regarded as commutation of the retribution which the injured person or his family was considered entitled to mete out to the injurer.

Of the German system Messrs. Schwedtman & Emery say: "The advantage of weekly pensions for injured workers or dependents as compared with lump sum payments is so thoroughly fixed in the minds of German theoretical and practical experts that it is impossible to find a single advocate of lump sum payments."[4] Speaking for the American Federation of Labor before the Federal Commission Mr. Samuel Gompers said: "I can see that there may possibly come a time during the life of a totally incapacitated workman, his condition being due to an accident, when a lump sum might be of some advantage to him, but I think it is of much greater advantage to him and his dependents and to society to avoid risks of a failure resulting from the investment of a lump sum. It would be better and safer for him and his dependents and for society if he were for his entire life time saved from charity or pauperism. While it is true that one might occasionally achieve a financial competence by reason of a timely investment of a lump sum of money, the chances are the other way. I believe that the purpose of compensation is not necessarily to afford the opportunity even for successful entrance into business, but it is primarily to secure for the injured or the workman killed, either for himself in the first instance or his family in every instance,

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[1] Rep. Conf. Com., 65; Bulletin des Assurances Sociales (1910), Pt. III., p. 685.
[2] See Rep. Fed. Com. U.S., 111, 112, 676.
[3] See Rep. Ill. Com., 29.
[4] S. & E., 49, 206.

the opportunity of being saved against charity or pauperism. Once the lump sum is paid and invested in a small business, or otherwise, and it is dissipated by a failure to secure success, the maimed man or his family or dependents are no longer entitled—and justly so—to payments on the part of the employer in whose service the injury or the death occurred.'"

There may doubtless be instances where a lump sum payment wholly or partially commuting the periodical payment would be advisable. One instance of this would be where an artificial limb or other device was required. But experience seems to show that once precedents of commutation are established it is difficult to control their extension, and while there should probably be provision for commutation at the discretion of the administering board, such a provision should be surrounded by safeguards adequate to prevent its abuse.

As to the basis of compensation payment, it is being submitted below,[2] subject to certain considerations, that this should be a fixed proportion of the impairment of earning capacity with a certain fixed maximum.

Fifth: The relief should be certain. It should not depend upon the continued solvency of the employer in whose service the injury was sustained.

The correctness and importance of this principle is so obvious that it requires no supporting argument. Its absence is the most manifest defect of an individual liability system. The Departmental Committee of 1904 frankly recognized this defect of the English Act, and forecast the trend of future legislation in a rather remarkable paragraph quoted elsewhere.[3] As stated elsewhere,[4] insurance under an individual liability system fails where and when it is most needed. In the case of the small employer, where the danger of insolvency is greatest, insurance is, under a voluntary system, usually omitted, and in the case of the larger employer it fails where the accident is of a magnitude beyond the scope of the limited liability assumed by insurance companies at normal premium rates.[5]

It need hardly be pointed out that in the matter of solvency a collective system offers a vast superiority over an individual liability system. The basic principle of insurance is the spreading of loss over a wide area, and the proposed system would act automatically as an insurance system under which each employer would be supported by the whole class into which for assessment purposes he was placed. The only danger to be guarded against in such a system would be that of having the classes too small.

The highest degree of solvency is, of course, attained in a state system of insurance backed by the guarantee of the state. The recent criticisms of Dr. Friedensburg upon the German system point to the possibility of the ultimate assumption by the Government of full control of and responsibility for the compensation now administered by the trade associations of Germany. The present system of Germany is not a state system. The state merely lends its compulsive power for purposes of organization. Having compelled employers to organize, the state steps aside, leaving the management of the funds to the mutual associations

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[1] Rep. Fed. Com. U.S., 869, and see further discussion of subject, p. 869 et seq.
[2] See post, p. 39.
[3] See post, p. 51.
[4] See post, p. 45.
[5] See post, p. 60.

and exercising only a regulative supervision. The size of the mutual associations, affords a guarantee of solvency sufficient for all practical purposes, but as Dr. Friedensburg suggests, the possibility exists that a period of industrial depression might render the trade associations incapable of fulfilling their obligations. Against such a contingency the Government of Germany has compelled the setting up of a reserve, which has now reached a very large amount, by adding a small margin to the yearly insurance rate.

With the machinery for the collection of insurance premiums in the hands of the state there is not the same necessity for the setting up of a contingency reserve, and the state being in a position to levy the necessary funds, need have no compunction in assuming a responsibility which affords the strongest possible guarantee to the workman.

Sixth: *The amount of compensation should be definite and ascertainable both to the workman and the employer. The system should entirely displace the present method of compensation by an action for damages, and the employer should not be subjected to any further or other liability except in cases of gross carelessness or intentional wrong on the part of the employer.*

On pure economic grounds it is important that the obligation cast upon employers should be as definitely ascertained as possible. If the burden is to be transferred to the consumer it must be more closely calculable than the amount of a jury verdict. The employer should be in a position to place in his estimates a definite amount against accident compensation without being subjected to the contingency of expensive actions at law in addition.

On grounds of economy also and for the protection of the workman himself it is important that the glamour of a common law verdict with its speculative possibilities should be removed. So long as there is left open to the workman the opportunity of an individual right of action, with or without the option of a subsequent claim upon the compensation fund, there will remain the possibility and probability that the workman, under the advice of interested persons, will resort to this speculative remedy.[1] "Compensatory legislation is intended to exclude or purposely endeavors to discourage, save in exceptional cases, the use of pre-existing remedies at law. The creation of a single liability or a single obligation to contribute to a compensation fund, is the purpose and evident tendency of all foreign legislation. A single liability is essential to the satisfactory operation of the compensatory principle and its adoption should therefore be accompanied by the repeal, as far as possible, of all other remedies."[2] This accords with the opinion of the writers and authorities upon the subject.[3]

It is very important also in a system of compulsory state insurance that there should not be left outstanding any uncovered liability. Where such a liability remains, employers will naturally have recourse to insurance to protect themselves and the very condition of things which the state insurance system is intended to prevent is again called forth. From the standpoint of the employer the advantage of a compensation system such as that proposed would be largely lost if the older legal remedies were still left available to the workman. It may be

[1] Rep. Conf. Com., 214; Rep. Mich. Com., 33.
[2] S. & E., 264.
[3] Rep. Conf. Com., 227; see also S. & E., 79; Rep. Fed. Com. U.S., 16.

that the other remedies would be rarely resorted to, and this is sometimes used as an argument against their abolition. But so long as the possibility of an action at law remains so long will the workmen be tempted to resort to it and so long will the employer be subject to an insecurity against which he will find it necessary to insure himself and will be solicited to do so by insurance companies. Such a system would not be satisfactory to the employers of the province.

A difficult situation appears to have arisen in the State of Ohio by reason of the provision of the Act of that State which gives to the employee the option, in cases where the injury was due to the wilful act of the employer or his officers or agents, or their failure to comply with any statute or municipal regulation or the orders of government or municipal officers, either to apply for compensation to the Insurance Boad or to bring an action at law. Representatives of liability insurance companies are urging, and with reason, that under the state insurance system a very substantial portion of the risk is left uncovered while under the policies of the private companies this risk is assumed. The result has been a general indisposition on the part of employers to enter the state scheme, to the prejudice of the state system in competing with private companies.

In the State of Washington there was, it appears, at first some hesitation on the part of employers as to dropping all liability insurance, but it was largely due to the doubt as to the constitutionality of the Act, and has now almost entirely disappeared.

There would, of course, be no objection to strict penalties upon the careless employer, but these should not be in the form of an action against the employer by, and for the benefit of, the workman. The regulations of the Board or of the voluntary associations would doubtless provide penalties for negligence on the part of the employer for breaches of statutory enactments or disobedience to duly authorized inspectors. Provision might also be made for proceedings by the Board against an individual employer in the case of an injury due to the wilful act of the employer. But such proceedings should not accrue to the benefit of the individual workman and any amount recovered should go into the general fund. On the whole it is submitted that very little improvement can be made upon the provision of the Washington Act dealing with this feature.[1]

Seventh: The funds for relief should be provided by joint contributions from employers, workmen, and the Province. Employers and workmen should pay in such proportions as represent the number of accidents occurring by reason of the hazard of the industry and the fault of the employer on the one hand and the fault of the workman on the other. The province should contribute an amount representing approximately the cost of administration.

The only phase of the subject of workmen's compensations upon which any considerable difference of opinion exists is that of contribution by the workman to the cost of the insurance.[2] So long as compensation was a matter of recovery of damages for fault, direct or indirect, on the part of the employer, there was no logical reason for contribution, but the modern systems of compensation in which all cases are covered practically regardless of fault raise the question whether the workman should not contribute out of his wages a proportion of the insurance premium representing the proportion of accidents due to the fault of the workman.

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[1] Section 9.
[2] See Rep. Ohio Com., 316.

The difference of opinion amongst expert authorities may be attributed very largely to the strenuous opposition of the rank and file of the labor interests to any deduction of wages.[1] Some of the writers and authorities upon the subject have been or are official representatives of labor organizations, and are naturally influenced by the general attitude of these bodies. Other investigators who are not directly subject to this influence are nevertheless actuated by a spirit of compromise to the hostility of labor organizations and by the notion that any economic injustice will find its adjustment in the amount of wages. As the question of contribution is the only feature of the subject upon which the interests of employers and workmen seriously diverge, it is only natural that this spirit of compromise has found expression in some of the established systems. But notwithstanding the disposition of workmen to avoid the burden, the principle of joint contribution has been recognized and embodied in a majority of the systems[2] and workingmen themselves are becoming gradually educated to a broader view of the whole subject.

The attitude of trades unions upon the question of contribution is commented upon by Professor Henderson in the following passage: "Obligatory workingmen's insurance has been in the past in this country connected with attempts to compel the workman to pay an excessive share of the premiums, to break the power of the union and alienate its members, and to retain the equitable share of the funds to which the men have contributed if they leave the service or are discharged. In conventions the propositions for collective insurance have been championed by the socialist faction and have gone down in the defeat of this party. Insurance in the European sense has never yet been offered to our workmen in any state.[3] When it is shown that obligatory insurance does not mean absolute control of employers, but union of effort in which both sides are fairly represented in local management; that the interest in collective bargaining remains untouched; that voluntary organizations are recognized and made secure by suitable state supervision and control and that taxpayers, so far from being asked to increase burdens, will be substantially relieved from many charity demands, it seems likely that indifference and antagonism will change to approval. Mr. John Mitchell has expressed a favorable opinion which already has won the attention and approval of many trade-unionists."[4]

The point of view upon this phase of workmen's compensation varies with the basic conception of the whole subject. "Great Britain clinging to the spirit of the poor laws, exacts no contribution from the beneficiaries of her old-age pensions and compensation laws. On the continent, however, workmen contribute to social insurance generally and in some cases to accident compensation. . . . . Insisting that differentiation from poor relief must be conspicuous in fact if social insurance is not to encourage pauperism, we make no difficulty about its accuracy in point of law and shall, therefore, assume that compensation acts are

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[1] But see Rep. Mich. Com., 134, 141.

[2] The contributory principle is recognized in the following European countries:

Norway	4 weeks waiting period.
Sweden	60 days waiting period.
Denmark	13 weeks waiting period.
Holland	13 weeks waiting period.
Germany	13 weeks waiting period.
Austria	4 weeks waiting period and 10% of premiums.
Switzerland	25% of premiums.

[3] This is of course not true since the Acts of Washington, Ohio and Massachusetts.

[4] Henderson, Industrial Insurance, 2d edition, 61.

not to be classed with pauper legislation."[1] In other words: "The British legislature intervenes to relieve dependency; the German to confer a right to assistance in return for contribution."[2]

As a matter of fact, indeed, the original intention in introducing the English Act was that workmen should contribute to the compensation for injuries by themselves bearing the burden for the first three weeks. Mr. Joseph Chamberlain stated in introducing the Act of 1897, that the only ground which justified the proposal of the Government to make provision for work injuries was the fact that there were a large number of injuries that might be presumed to incapacitate the workmen more than three weeks and said: "If it could be presumed that all work-injuries would last three weeks or less, I can see no reason for the interference of the Government because those are injuries for which the workman might be expected to provide against himself."[3]

The German system has steadily adhered to the principle of a long "waiting period," thirteen weeks. In other systems the workman pays directly a portion of the insurance premium by way of deduction from his wages, and the latest and one of the most thoroughly considered acts of the United States, namely, that of Ohio, recognizes the contributory principles by authorizing the employer to deduct 10 per cent. of the insurance premium from the wages of the workman.

While the general tendency is for workmen to oppose and employers to favour contribution from the workman, this is not uniformly the case. In Germany where the relations arising out of the workman's contribution are best understood the tendency is to some extent in the other direction. During the last session of the Reichstag an amendment proposed by employers and bitterly opposed by workmen was passed increasing the contributions of employers to the sickness fund from one third to one-half.[4] The motive of the workmen in opposing the change was to maintain their representation on the management of the association. There is therefore, this further consideration in connection with the question of contribution that the extent to which workmen participate in the administration of the system will naturally depend upon whether, and to what extent, workmen contribute to the insurance fund.

Leaders of labour organizations are in fact quite free to admit that their chief objection to contribution is based not upon principle but upon the unwillingness of the workman to pay for insurance; and that education is likely to make a great difference in this attitude. It is believed that the workmen of Canada and particularly of the Province of Ontario will be quicker than the workmen of most other countries to appreciate the immense benefits of the proposed scheme and to take their proper part in its maintenance.

Apart from experience and logic, however, it should be borne in mind that the great mass of employers in the Province regard it as of paramount importance that workmen should contribute to the accident insurance funds. A system throwing the burden entirely upon employers would be received with hostile feelings which would very naturally affect the administration of the Act. It will undoubtedly make a great difference throughout the Province in the enforcement of the Act and in the establishment and development of the proposed voluntary associations for accident prevention, if the Act, instead of being looked upon as an imposition, can be launched with the favour and even enthusiasm of employers.

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[1] Brief of Carman F. Randolph, Rep. Fed. Com. U.S., 1428.
[2] S. & E., 10.
[3] See Rep. Fed. Com. U.S., 1092; S. & E., 10.
[4] See Rep. Conf. Com., 165.

The principal reason for covering all accidents, regardless of questions of fault, is that the expense of determination of these questions in specific cases is eliminated. But to throw the entire cost of insurance upon the employer not only shocks the sense of justice but places the workman in a humiliating position. It is no doubt true that on its economic side any money contribution on the part of the workman could be worked out as a matter of adjustment of wages. It may be observed by the way, that this is true in a sense converse to that in the argument against contribution, for if the workman's contribution were inequitably large it would result in an increase of wages. There is, however, a point at which the self respect of the workman becomes involved. Even the most advanced form of socialism would not seek to free the workman from all sense of responsibility for his own actions, or to throw upon the employer or the community at large the responsibility of making provision for his every want. So long as it is recognized that there are certain things which the workman is expected to provide for himself out of his wages, there must be a point at which the obligations of the employer end. This principle is so elementary that its mere statement almost calls for apology; yet this very principle would be violated by throwing on employers the burden of compensating workmen for injuries due to their own fault. So long as any injuries are due in whole or in part to the fault of the workman elementary principles of justice demand that he should bear a share of the pecuniary responsibility.

If the pecuniary consideration were the only one it might be partially counterbalanced by the inconvenience of collecting the workman's portion and the irritation attendant thereupon. But there are other and weightier reasons for a recognition of the principle of contribution. It will not be seriously disputed that the highest degree of co-operative effort on the part of the workman to the end of preventing accidents cannot be secured without throwing upon him some direct pecuniary responsibility.[1] If there should be irritation attendant upon the practice of deducting from wages a portion of the insurance premium, or if there should be dissatisfaction with the "waiting period," these will serve to keep before the mind of workmen not only individually but through their organizations to a degree not otherwise possible, the interest of the workman in systematic and scientific methods of accident prevention; and collective effort on the part of workmen is in fact as necessary as collective effort on the part of employers in order to attain a full measure of success in prevention of accidents.[2]

If there were not to be some form of contribution from workmen it would be necessary, upon principles of elementary justice, to withhold compensation in cases where the injury was due to the fault of the workman. The proposition to compensate in all cases regardless of fault is logically contingent upon the workman paying his share. The employer's share represents those injuries which are the result of the fault of the employer or his agents or of the inherent hazard of the occupation. The workman's share represents those injuries which are due to the fault of the workman.

There is of course no question that a very large number of accidents are attributable to neither the fault of the employer nor the intrinsic hazard of the industry. The only question that can arise is as to the relative proportions. The following figures are given from the statistics of Germany:[3]

Employers' fault	17¼ per cent.
Workers' fault	29⅘ per cent.
Employers' and Workers' fault	10 per cent.
Hazard of Industry	43 per cent.

[1] Rep. Ohio Com., Part II, 13; Interim Rep. Ont. Com., 440.
[2] For further argument, see Rep. Ohio Com., Pt. II, 319; S. & E., 55.
[3] S. & E., 55.

Accident statistics of industries for the three years, 1887, 1897, and 1907 under German law[1] give the following figures:

	1887. %	1897. %	1907. (46,000 Accidents). %
By fault of employer	20.47	17.30	16.81
By fault of employee	26.56	29.74	28.89
By fault of both parties	8.01	10.14	9.94
Due to negligence of the parties	55.04	57.18	55.64
Due to inevitable risks of the industries and other causes	44.96	42.82	44.36
	100.00	100.00	100.00

"An investigation by Crystal Eastman, a trained student of this problem, of 377 fatal accidents in the Pittsburg, Pennsylvania district, classified the responsibility as follows: Causes attributable solely to employers or those who represented them, 29.97 per cent.; causes attributed solely to those killed, or their fellow workmen, 27.85 per cent.; causes attributed to both the above classes 16.91 per cent., causes attributed to neither of the above classes 26.27 per cent.[2]"

The principle of contribution may as above indicated be embodied in a number of ways. The most direct method is that of collecting from the workman a proportion of the insurance premium. This is practicable only by having the employer pay the whole premium and deduct the proper amount from the wages of the workman. Another method is to interpose a considerable "waiting period" between the occurence of the injury and the beginning of compensation payments, thus leaving workmen to bear minor injuries either individually or through collective first aid or sickness funds. A third method is by reduction of the scale of compensation, leaving workmen to bear individually a greater portion of the burden of all injuries.

It is submitted that the last of these three methods is the least satisfactory.[3] It has been urged that so long as the workman is not compensated up to the full amount of the loss of earning capacity he does in fact contribute to the extent of the difference between the full earning capacity and the basis of compensation. But the reasons for fixing the basis of compensation at one-half and two-thirds the lost earning power are not connected with the question of contribution. For obvious reasons it would not be expedient to hold out to a workman an undiminished income as the result of disablement. If contribution were the only consideration it is submitted that it would be better to pay full compensation with contribution than partial compensation without contribution.

There are three answers to the argument that the difference between the basis of compensation and full earnings constitutes a sufficient contribution from the workman. In the first place the 100 per cent. "earning capacity" of the workman is usually based arbitrarily upon the wages which the workman was receiving at the time of the injury. But if the workman had not been injured there is no human probability that he would have earned full wages to the time of his

[1] Rep. Fed. Com. U.S., 732. See also Rep. Ohio State Bar. Ass'n. Vol. XXXII., p. 100; Rep. Ohio Com., Pt. I., p. xxix.

[2] For further reference to questions of fault, see Interim Rep. Ont. Com., 314 et seq., 353, et seq.; Rep. Ill. Com., 36, 79; Bulletin 74 U.S. Bur. Lab., 120; Bulletin U.S. Bur. Lab., No. 92, pp. 2, 3, 60, 65.

[3] See S. & E., 56.

death, so that the workman's actual loss cannot be reckoned upon a 100 per cent. basis. In the second place the compensation would place the workman beyond further contingency of loss of earning capacity by reason of injury from other causes or of sickness. The compensation would constitute an assured income not subject to contingencies of sickness, old age, or unemployment and would render insurance against these unnecessary.[1] In the third place the workman is being paid while not producing. Compensation cannot be put on the same basis as wages. Wages are the price paid for service actually rendered. A system which would place the non-productive individual by the accident of incapacity on the same plane as the productive workman would be an economic anomaly. As to this phase of the subject Dr. Zacher has said: "The limitations of the pension for complete industrial incapacity to two-thirds of the annual earnings, as in the case of most government pensions, is justified by the fact that the time which every workman unavoidably loses through unemployment and the cost of working clothes, tools, etc., must be deducted and that injuries caused by the workman's own fault are compensated with the rest."[2]

A much more equitable and at the same time more salutary method of contribution is through a "waiting period" immediately following the occurrence of the injury, during which period no compensation is paid. One purpose of a waiting period is the prevention of simulation and malingering. These evils doubtless exist in every system of workmen's compensation,[3] and one of the great problems is to reduce them to a minimum. The elimination of simulation is important, not only in the interest of economy but because of the demoralizing effect produced upon the working class and the stigma thrown upon the whole system by successful imposition. Accordingly every system of workmen's compensation withholds compensation for trifling injuries whose effects do not last beyond a week or two. By this means a considerable saving of administrative work is effected and simulation prevented in the form most readily practicable.[4]

The danger in fixing a waiting period as a form of contribution is that its function as such is liable to be disregarded or forgotten in favor of its function as a preventive of simulation. And arguments are very likely to be advanced against the "injustice" of withholding compensation from workmen for so long a period. So in England, even before Mr. Chamberlain's Bill passed the House the period of three weeks was reduced to two weeks. In 1906, in spite of the recommendations of the Special Parliamentary Committee against it, the period was further reduced to one week with provision that where the injury incapacitated the workman for more than two weeks, compensation should commence from the beginning. In the discussion of the amendments the propriety of the workman's bearing some share of the accidents was apparently entirely lost sight of and the only consideration was the influence of the provision upon malingering and simulation.

A very satisfactory solution of the problem of a waiting period which would supply at the same time an avenue of contribution, a check upon simulation, prompt and adequate surgical and medical aid and an inducement to co-operation between employer and workman was suggested in the draft Act submitted by the investigating commission of the State of Washington. This was a first aid fund

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[1] Interim Rep. Ont. Com., 327.

[2] Handwörterbuch der Staatswissenschaften, Vol. VIII., p. 65, Jena, 1911.

[3] Bulletin des Assurances Sociales, 1908, No. 5, 201; Rep. Fed. Com. U.S., 1432; La France Judiciare, Mar. 12, p. 35; VIII. Congress des Assurances Sociales, 138, 790.

[4] S. & E., 290; Rep. Fed. Com. U.S., 84; Journal of Insurance, Institute of London, 1909-10, p. 59; F. & D., 143, Cd. 2208, p. 75.

which would fill up the gap left by the waiting period and provide a "buffer" fund out of which hospital and surgical expenses would be paid where necessary, as well as compensation. The principle of this fund was in a measure that of the German sickness fund, but instead of thirteen it was to cover only three weeks. The fund was to have been raised by equal contributions from employers and employees, the employees' portion to be deducted from wages. The scheme was supported by the labour interests but some opposition was encountered from employers in less hazardous occupations who objected to paying at the same rate as that of the more hazardous industries. In the haste of the legislative session it was found impossible to reform the scheme and it was dropped from the Act with a view to its later incorporation by way of amendment. In a report issued by the Industrial Insurance Commission which is in charge of the administration of the Act, covering the first few months of operation, the immediate creation of such a fund is strongly urged upon the legislature.[1]

The equitable proportion of the cost of insurance to be borne by workmen would, according to the statistics above shown, be from 25 to 30 per cent. If it is decided that the contribution shall be direct it is submitted that the Act should name a definite proportion with a direction to the employer to deduct the proper amount at stated periods from the wages of the workman. If the first aid fund plan is adopted the contributions should be so arranged that the workman would bear his proper share of the total cost both of first-aid and compensation proper. If sickness insurance or other benefits were to be included in the scope of the society, the proportion of contributions could be fixed accordingly.

With reference to the portion to be borne by the State it is submitted that this should cover the cost of administering the system so that practically the whole of the contributions to the fund should go to the relief of the injured workmen and their dependents.[2] The withdrawal from the courts of the work of adjudication will mean a considerable saving in the expense of administration of justice already borne by the province. The provision for the needs of injured workmen and their dependents will also relieve to a very large extent the burden now borne by the general public by way of poor relief and charity.[3] In most modern compensation systems these features of workmen's compensation are recognized and the state itself bears a portion of the expense of the system. In some systems, as for instance, that of Switzerland, the state in fact contributes a definite proportion of the insurance premiums.

Eighth: *The system of relief should be such as to secure in its administration a maximum of efficiency and economy, and as large a proportion as possible of the money contributed should be actually paid out in compensation.*

This principle which is of the most obvious importance is in many jurisdictions the most consistently ignored. There are now available abundant statistics to demonstrate the relative efficiency of the different systems of compensation in performing their intended functions. The German collective system represents an efficiency of 87.2 per cent., only 12.08 per cent. being taken up in expenses of administration.[4] Other European systems range from 80 to 90 per cent. In the

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[1] See post, p. 35.
[2] Rep. Mich. Com., 134; Rep. Ohio Com., Pt. II., p. 316.
[3] Rep. Ohio State Bar. Ass'n. XXXII., p. 123; Rep. N.Y. Com., 31; Rep. Ohio Com., Pt. II., p. 208.
[4] S. and E., 47.

State of Washington the cost of administration for the first six months, which is naturally heavier than it will be for the future, has been well within 15 per cent. of the compensation payments.[1]

The individual liability systems on the other hand show a very large proportion of waste in conveying the money contributed by the employer to injured workmen and their dependents.[2] Recent statistics of the Board of Trade in England giving figures of the business of liability insurance companies indicate the administrative waste of the English system and show that while these companies have been operating at a net loss, a very large proportion of the money paid in by the liability insurance premiums has been consumed in expenses of litigation and commissions on business.[3] Because of circuity of liability under the English systems and the method of adjustment of claims, there is a further waste which, it is calculated, brings the efficiency of the English Act down to the neighborhood of 50 per cent.

Statistics gathered by various commissions in the United States show that in that country less than twenty-five per cent. of the money paid in liability insurance premiums actually reaches the injured workman or his dependents, the rest being consumed in expenses of litigation, soliciting business, profits and expenses of administration.[4] It is fair to assume that liability insurance in this province would show much the same percentage of waste as in the United States, and no system of individual liability could probably be expected to produce much better results than those shown under the English Act.

The aggregate pay-roll represented by the Canadian Manufacturers' Association in Ontario is about $150,000,000. On the basis of two per cent. the insurance premiums of the members of the Association would amount to $3,000,000. There is every reason to believe that under an individual liability system one-half of this amount or $1,500,000 would be wasted for members of the Association alone, without accounting for manufacturers who are not members of the Association or for employers in other occupations. The greater part of this money can be saved either for employers or for workmen by the elimination of the circuitous liability involved in the individual liability system.

Ninth: The procedure for the adjustment of claims should be as far as possible dissociated from the regular courts of law. It should be simple, and calculated to involve in its operation a minimum of friction between employer and employee.

The largest item in the expense of the present system, and a very considerable item in all individual liability systems, is the expense connected with the adjustment of claims. The larger portion of this expense consists of course of legal fees. In a system where compensation depends upon the determination of private rights as between employer and employee,—and this is indispensible where the right of the employee depends upon proof of fault—a resort to the courts, if not inevitable, is avoidable only with great difficulty. But in a system where the

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[1] For the first twelve months it has been a little less than 10 per cent. See post, p. 85.

[2] See post, p. 61.

[3] See F. & D., 46; "Up to the present time expenses of management, including litigation and adjustment, have absorbed one-half the premiums. The industries of Great Britain are thus paying in premiums, if adjustments are fair, about twice the net cost, and, if not fair, they are paying in expenses—which, under the German system, have been made unnecessary—many times what would enable all adjustments to be fair, and even liberal."

[4] Rep. Ill. Com., 37; Rep. Fed. Com. U.S., 43; see post, p. 61.

right to recover depends largely or entirely upon the establishment of a claim to a fund there is no necessity for the formalities, and no excuse for the expense, of an ordinary legal action.

In some jurisdictions the method of arbitration has been resorted to. This method, however, maintains the notion of a contest between the employer and the employee with all the disadvantages attendant upon such a notion. In addition to this, the court, being an amateur one, has not the experience or facilities which a regular body would have of dealing with the various phases that arise.[1]

Another important consideration in determining the method of adjustment is the desirability of uniformity. Under a method of arbitration, and even under a system of judges or other local tribunals, there is certain to be a great diversity of treatment, even though an effort be made to adhere to lines of precedent. In the light of the criticisms of Dr. Friedensburg[2] it is apparent also that a system of local judges governed by precedent may give rise to grave abuses.

The method pointed to by all careful observers and adopted by many jurisdictions is that of a special board or tribunal. Such a board should of course be vested with full jurisdiction over questions of fact, and the procedure should be rendered as simple and direct as possible. It is submitted that in the large majority of cases a full and satisfactory adjustment could be made upon written reports supported by affidavit. A competent board of officials could, upon reports of the physicians in charge, the employer and the injured person, adjust most cases in a manner vastly more satisfactory than would be possible through the ordinary machinery of the courts. This is the method adopted by the Washington Board and it is said to work very satisfactorily. It may be added that a wrong decision would, under such a system as that proposed, not be a very serious matter as it could be reviewed at any time and set right. It would not be a matter of settling once and for all a contest over legal rights as between two parties.

Tenth: The system of compensation should be directly associated with a system of inspection with a view to the prevention of accidents and a system of prompt and expert medical attendance to mitigate the effect of the injuries.

This principle is really a corollary of the first principle, which embodies the conservation phase of the subject of workmen's compensation. The collective insurance systems tend almost automatically to produce a system of expert inspection. This is of course the principal reason for the advanced position of Germany in the matter of accident prevention.[3] Each insurance association being confined to some particular line of industry there is not only the incentive to, but the facility for, a system of highly developed factory inspection and the management of the associations is in the hands of those best qualified to superintend and direct preventive activities.

The individual liability systems provide no corresponding incentive or facilities. Each insurance company bids for all classes of business. Such inspection as these companies conduct cannot in the nature of things be as thorough as in the specialized systems of collective insurance, nor has the insurance company the same intimate interest in the welfare of the workman or the same appreciation of

[1] As to litigation under English Act, see 24th Rep. U.S. Bur. Lab., 1512; see Rep. Ill. Com., 38.

[2] See post, p. 86.

[3] S. & E., 100, 128.

conditions under which he works as an association of employers would have. The insurance company has no direct facilities for standardizing machinery nor any means of enforcing regulations except by a threat to decline or cancel the policy, the coercive effect of which would be very slight. There is every reason in fact why the factory inspection system should be closely co-ordinated with, if not merged in, the industrial insurance system. The inspection would then be induced from within instead of imposed from without. It would be sanctioned by all the weight of co-operative endeavor as well as of substantive law.

Another large field of conservation is open in the direction of expert medical attendance for the purpose of preserving as far as possible the industrial usefulness of the workman. Excellent results in this line of activity are found in Germany. "Authorities all agree and are very emphatic on the point, that immediate attention to all injuries saves much suffering, many lives and limbs and a great deal of money. This principle has been recognized by progressive employers and insurance companies in the United States, but prompt relief is still lacking in many instances. Under the German law every injured worker and his dependants are taken care of automatically and immediately after the occurrence of the accident, on the theory that from a human as well as an economic point of view it is most important to bring back every worker from the position of a consuming member of society to that of a producing member."[1] "The Bavarian Building Industries Employers' Association established to its own satisfaction that the expenditure of approximately $8,000 in prompt and expert medical attention to its injured workmen, saved approximately $160,000 in compensation expenses. A Vienna insurance institution figured the net savings in compensation due to the establishment of an ambulance and first aid medical station to be $27,000 in nine months. An engine driver 35 years old was scalded during a wreck. The attending general physician thought the amputation of the left arm necessary. The employers' association succeeded through specialists' treatment at its own hospital in saving the arm and bringing it back to normal strength. At the time of accident the driver earned $330 per annum—a few years later $425 per annum, which proves that his earning capacity was unimpaired. The amputation of the arm would have meant a cripple with less than half earning capacity, and a life compensation of $150 annually, equal to $8,000 or $10,000 total expenses to the Employers' Mutual Insurance Association. We might quote fifty similar cases showing the wonderful results of conserving the best resources of the nation, the self-respect and earning capacity of her workers, by means of prompt and proper medical attention."[2]

For providing facilities and organization for this latter class of conservation work no better avenue appears to be open than the proposal made by the commission which drafted the Washington Act, namely of a separate "first aid fund."[3] Of this proposal of the drafting commission, the report issued by the workmen's compensation commission of the State of Washington in February, 1912, speaks as follows: "The burning issue of the industrial situation to-day is the need of a first-aid fund. When the Act was discussed in the legislature it already bore a provision for first-aid, which was stricken out at the urgent request of the manufacturers, who declared that they desired to establish their own first aid funds; it was also felt that the law, revolutionary as it was in a great many respects, would prove to be of sufficient burden without the addition of a first-

[1] See Rep. Fed. Com. U.S., 686.
[2] See S. & E., 51.
[3] See post, p. 72.

aid provision. The whole matter was therefore stricken out and the schedules designed to accompany that provision were allowed to remain as they are..... .....It will be seen that the law provides simply for the bare necessities of life during disability or after the death of a workman, and the expense of doctor's bills, hospital dues, etc., is absolutely unprovided for. It is clearly up to the employers and employees of the State to give this question of first-aid careful and serious consideration in as much as it constitutes, in the opinion of the commission, the most imminent problem in connection with the administration of industrial insurance in this State to-day.'"[1]

It is submitted that in the administration of first-aid funds a different principle might be adopted from that in the administration of the compensation fund proper. It might be well to afford facilities for placing the administration of first aid funds, under proper supervision, in the hands of such benefit societies as now exist or others which might be created. It is submitted that it would be advisable to localize as far as possible the administration of these funds and that possibly a system might be devised whereby benefit societies would be created covering either single industries or groups of related industries in a particular geographical district.[2] Such variations might be allowed in their constitutions as conditions warranted and where no such society existed the central administrative body would have very little trouble in handling the funds.

Eleventh: The system should be such as to secure the most liberal measure of relief possible without undue strain upon industry.

This principle is enunciated as a basis for a discussion of the cost of compensation under the various types of compensation systems and of the different actuarial methods in fixing rates.

The immediate increase in the expense to employers consequent upon the introduction of a compensation system is, of course, the most serious economic factor from the employers' standpoint. In an industry running on a small margin of profit an increase of even two per cent. on the pay-roll may make the difference between success and failure. In addition to the immediate advantage to the workman in having provision made for loss of earning capacity and in addition to the immediate disadvantage to the employer in having his profits reduced, it is necessary to consider a number of consequences flowing from the imposition of an undue burden of compensation.

If the burden placed upon employers in any one Province exceeds that upon employers in other Provinces or other countries whose products compete in the market with the products of that Province, the employers of that Province are to the extent of the excess at a disadvantage which will necessarily be reflected either upon the price of the product or upon the demand for the product. In either case the result is a loss which falls directly upon the employer and which is shared more or less directly by the employee. Apart, therefore, from the immediate advantage to the workman and disadvantage to the employer it is important that the schedule of compensation should not be substantially greater than that of other provinces of Canada and other jurisdictions whose products compete with those of our industries.[3]

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[1] See also statement of Mr. M. M. Dawson, Interim Rep. Ont. Com., 442.
[2] See Interim Rep. Ont. Com., 195.
[3] See Rep. Fed. Com. U.S., 29, 89.

The increase in expense incident to the introduction of a workmen's compensation Act is indicated by the following tables of figures showing the increase in liability insurance rates after the introduction of the Acts in England, the Provinces of British Columbia and Quebec, and the States of New York and Pennsylvania.[1]

ENGLAND.

	1907. Under Employers' Liability Law.		1908. Under Workmen's Compensation Law.*	
	$ c.	$ c.	$ c.	$ c.
Bakeries	0 07½	0 12½	.....	1 12½
Brickmaking	0 10	0 12½	.....	1 50
Carpentry	0 10	0 15	1 00	1 62½
Blast Furnaces	0 10	0 20	.....	1 50
Glass Factories	.....	0 10	.....	0 85
Nail Factories	0 10	0 20	.....	1 25
Quarries	0 15	0 20	.....	2 25
Rolling Mills	0 10	0 20	1 50	1 87½
Tanneries	.....	0 10	.....	1 25

* It should be remembered that these rates have been several times raised since, and it is now absolutely necessary to make another general advance.

PROVINCE OF BRITISH COLUMBIA.

	Under Liability Law.		Under Workmen's Compensation (English system).	
	$ c.	$ c.	$ c.	$ c.
Bakeries	.....	0 17	.....	0 89
Brickmaking	.....	0 42	.....	1 26
Carpentry	.....	1 50	.....	2 50
Blast Furnaces	.....	0 49	.....	1 36
Glass Factories	0 15	0 42	0 88	1 26
Nail Factories	.....	0 42	.....	1 44
Quarries (stone)	.....	2 10	.....	4 06
Rolling Mills	.....	0 52	.....	2 17
Tanneries	.....	0 23	.....	1 13

PROVINCE OF QUEBEC.

	Under Liability Law.		Under Workmen's Compensation (English system).	
	$ c.	$ c.	$ c.	$ c.
Bakeries	.....	0 17	.....	1 37
Brickmaking	.....	0 42	.....	2 10
Carpentry	.....	1 50	.....	5 00
Blast Furnaces	.....	0 49	.....	3 30
Glass Factories	0 15	0 42	1 47	2 10
Nail Factories	.....	0 42	.....	2 40
Quarries (stone)	.....	2 10	.....	6 25
Rolling Mills	.....	0 52	.....	3 61
Tanneries	.....	0 23	.....	1 73

[1] Taken from brief of Miles M. Dawson, Rep. Fed. Com. U.S., 282.

STATE OF NEW YORK.

The following comparison shows the rates of employers' liability insurance before and after the Workmen's Compensation Act of 1909, since declared unconstitutional:

——	Employers' Liability Law.	Workmen's Compensation.
	$ c.	$ c.
Carpentry	1 75	5 00
Bridge Building (iron)	4 50	12 50
Quarries (stone)	2 00	7 50
Railways (steam)	2 50	10 00
Tunnelling	4 50	12 50
House-smithing	2 00	6 25

The following rates are taken from the schedule recently quoted by insurance companies under the New Jersey Act:

	$ c.	$ c.
Bakeries	1 25 to	1 50
Brickmaking	2 00 to	3 00
Carpentry	2 00 to	3 75
Blast Furnaces	4 00 to	5 00
Glass Factories	1 25 to	2 00
Nail Factories	2 00 to	0 00
Quarries	5 00 to	6 50
Rolling Mills	3 00 to	5 25

In comparing these rates consideration must, of course, be given to the relative benefits under the respective systems. Thus a recent report has shown that in England the average compensation in fatal accidents has been about $750. What would the rate have been to give a benefit corresponding to that in the State of Washington![1]

The probable increase in employers' liability rates which would result upon the introduction in Ontario of an Act giving benefits equivalent to those under the English Act has been conservatively estimated at 400 per cent.[2] and the rate of increase which would follow the introduction of a scale of benefits like that of the State of Washington would be much larger. It must be noted also that recent statistics show the absolute necessity of an increase in the rates in England.[3] An increase in expense to the employer such as that indicated above would involve a very serious shock to the industries of the Province; and the proposition of introducing a system involving this expense would meet with great opposition.

Under the current cost plan of insurance outlined below[4] a collective or state insurance system could be established at an immediate annual cost not greater than that of the present liability insurance rates.[5] Under this plan instead of capitalizing the periodical payments due to the injured workman or his dependents and setting aside a lump sum to provide for these payments, only the current cost of meeting the yearly payment would be assessed each year with a small margin for an

[1] See post, p. 54.
[2] See statement of Chas. H. Neely, Interim Rep. Ont. Com., 233.
[3] See post, p. 61.
[4] See post, p. 63.
[5] See Rep. Fed. Com. U.S., 102.

emergency reserve fund. The annual assessments would increase as the number of dependants increased and the annual rate would only reach its maximum after a period of twenty-five or thirty years. This was the actuarial plan adopted in the German system. It represents a minimum strain upon present industry and does not involve the shock to the economic system which is incidental to a system where the cost of compensation is capitalized at the time of the injury.[1]

Under a system of individual liability with its attendant system of employers' liability insurance it is, of course, necessary also to capitalize the compensation, and one of the defects of the English system is that it produces a maximum strain upon the industry by withholding from active industrial operations an immense amount of capital which is held by insurance and trust companies to meet future compensation payments or is deposited in trust accounts of judges to meet future compensation payments.[2] In fact one of the complaints against the present German system is that the margin of approximately 9½ per cent. of the premium rate regularly set aside for a reserve fund is too large and that the capital should be left in active use in the industry,[3] but under a system of trade associations, such as that of Germany, the accumulation of a reserve fund is, of course, more of a necessity than it would be under a system controlled and administered by the state itself.

The individual liability system also, on account of its wastefulness, necessitates the payment of insurance premiums approximately double those required to confer corresponding benefits under a collective system. The question of the amount of benefit to be allowed by a compensation Act will, therefore, depend directly and very largely upon the nature of the system adopted.

Thus the amount of compensation to be paid under a compensation Act will be influenced largely by three considerations: First, whether an individual liability or a collective or state liability system is adopted; second, whether the capitalized or the current cost plan of insurance is adopted, and third, whether the workmen contribute toward the insurance fund or not. Subject to these contingencies and within the limits imposed by the ability of the business to bear the expenses of compensation payments it ought, of course, to afford as large a measure of relief as possible to the workman without offering inducements to fraud.

The usual basis for computing the amount of compensation is upon the diminution of earning capacity. Where the result of the injury is total incapacity a percentage of the weekly, monthly or yearly wage is paid; and where the incapacity is partial a similar percentage is allowed upon the impairment. This basis appears most just as well as convenient and presents the least temptation for malingering and fraud. Some systems have adopted arbitrary schedules of values for the loss of different portions or functions of the body, allowing the payment of so much for a finger, so much for an eye and the like.[4] But the generally accepted basis of compensation is incompatible with such a practice. The pervading idea of modern systems is to supply or supplement the income destroyed or impaired by reason of the injury. The compensation is given by way of making up for lost earning power rather than by way of satisfaction or retribution.[5] Two important consequences follow upon this view of compensation. It follows in the first place that the compensation should cease with the necessity for it. If, for instance, a workman is

[1] See statement of Miles M. Dawson, Rep. Fed. Com. U.S., 180 *et seq.*, and brief Ib. pp. 270, 276.

[2] See F. & D., 23; S. & E., 206; Rep. Fed. Com. U.S., 676.

[3] See S. & E., 115.

[4] See Rep. Fed. Com. U.S., 783.

[5] See ante, p. 19; see also F. & D., 9, and statement of J. A. Emery, Rep. Fed. Com. U.S., 1088.

found after an injury to be in a position to earn an income equal to that enjoyed before the injury he would not be entitled under this view to a continuance of his compensation. In many cases an injury may be the occasion of a change of occupation by which earning power is increased, and in such cases payment should entirely cease. If a young man by reason of the loss of an arm should abandon an occupation involving manual labour and enter a professional occupation, earning a higher remuneration than he enjoyed before, there is no reason why he should remain any longer a pensioner upon the insurance fund. In some systems indeed the recipient is in such cases required, when he is in a position to do so, to refund a portion of the payments made to him during incapacity.[1] It is quite possible that in many cases it would be more convenient and less expensive to settle for minor injuries on a lump sum basis; but considerations of occasional convenience may well give way to the expediency of maintaining the general principle.[2] Another result of this view is that in case of death by injury, compensation is paid only to actual dependents. Where no dependency exists there is no reason for making the system a source of profit because of the existence of family relationship more or less remote. The occurrence of an injury should not be the occasion for the enrichment of persons not dependent upon the earnings of the injured workman. This principle is in accord with the common law rule and with the statutes of the Province. The above observations are, of course, applicable only to cases of deprivation of income and would not apply to such items as medical or funeral expenses.

It is submitted, therefore, that the basis of compensation ought to be a fixed proportion of the impairment of earning capacity, with a certain fixed minimum. Under the Act of the State of Washington the payment in cases of total disability is a pension of from $20 to $35 per month according to the number of dependents. Such a fixed sum involves the anomaly that a workman or his dependents may receive as compensation an income equal to or greater than that enjoyed before the injury. At the same time it must be remembered that this rate of compensation represents in the case of each capital injury, i.e., total incapacity or death, a capital sum of $4,000 which is on a higher scale than has probably been contemplated by anyone in this Province. It may be found that a scale of 50 per cent. of wages would bring the capital amount even higher than $4,000.

It is submitted, therefore, that while compensation based upon a percentage of wages appears most reasonable and desirable careful consideration should be given to the question of the capital amount represented by the scale of compensation, and the fixing of a reasonable maximum capital sum.

It is submitted, also, that in the case of permanent partial disability the compensation should be a periodical payment on the basis of impairment of earning capacity. This payment should be adjusted from time to time and should be entirely withdrawn when it is found that the workman is in a position to earn as much as he did before the injury. Where there are no real dependents no compensation should be allowed beyond medical and funeral expenses.

Twelfth: *The system should be such as to afford some promise of permanency.*

If the experience of other jurisdictions proves anything, it is that no system of individual employers' liability affords a permanent solution of the problem of workmen's compensation.[3] The English Act is regarded by all observers as repre-

[1] See 24th Rep. U.S., Bur. Lab., 2022.
[2] See 24th Rep. U.S., Bur. Lab., 40.
[3] For historical sketch, see Rep. Fed. Com. U.S., pp. 110, 111; see also F. & D., 18.

senting merely a stage in the development of a satisfactory compensation system.[1] The present demand in England for a compulsory insurance system[2] was anticipated in the report of the Departmental Committee of 1904.[3] In the Province of Manitoba, where an Act along the lines of the English Act was adopted in 1909, there is already a demand for a compulsory insurance system. Similar conditions exist in other jurisdictions where individual liability systems have been introduced.

It may be pointed out further that the collective system of Germany promises to develop into something more nearly approaching a state insurance system. The most cogent of the few constructive criticisms of Dr. Friedensburg points strongly to an ultimate assimilation of the various mutual associations of Germany under closer state control.[4] In Sweden, likewise, where there is a system of state insurance with the option of insuring in private companies, the state scheme has been gradually absorbing the business of its competitors owing to their inability to compete with it.[5]

Speaking generally of the systems of Europe Messrs. Frankel & Dawson say: "There is now observable a strong disposition to compel employers to insure and either to foster the establishment of a state insurance department as a monopoly or else to create other obligatory insurance institutions conducted under the supervision of the state."[6]

It may be argued that as a collective or state insurance system appears to be the ultimate solution there should be no objection to the development of such a system through the stage of an employers' liability system. The answer to this is that an employers' liability system involves two large economic disturbances, while the introduction of a collective or state insurance system need involve only one lesser disturbance. The introduction of an individual liability system which must necessarily be upon a capitalized plan would be in itself, as has been pointed out, a very direct and severe strain upon present industry. In addition to this it would involve the creation of an immense employers' liability insurance interest which must be wiped out upon the introduction of a collective or state system, and which, in the meantime would stand in the way of the introduction of a collective or state system.[7] Liability insurance companies recognizing the instability of their business must necessarily provide against it, and this provision can be made only by way of an increase of the burden upon industry. In the meantime, also, while the individual liability system is in operation, it entails a continuous waste which is in itself a serious drain upon industry. A state or collective system on the other hand could, as has been pointed out, be introduced with a minimum shock to economic conditions, and there is every reason to anticipate for such a system a permanency which an individual liability system fails to promise.

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[1] See 31 Can. L. T., 858; Cd. 2208, p. 122; extract, post, p. 51; 24th Rep. U.S. Bur. Lab., 1498; Rep. Fed. Com. U.S., 943.

[2] Rep. Fed. Com. U.S., 113, 117, also Interim Rep. Ont. Com., 174; F. & D., 46.

[3] See Cd. 2208, pp. 117, 121.

[4] Praxis der deutschen Arbeiterversicherung, 48; Friedensburg (Gray), 62: "Workingmen's insurance can be truly beneficial in its operation only when, free from all exaggeration and excess, and especially from conscious or unconscious subservience to the lower classes, it works as an institution of the State, as impartial as every other kindred institution."

[5] F. & D., 38.

[6] See F. & D., 138.

[7] See Rep. Fed. Com. U.S., 113.

ANALYSIS OF COMPENSATION SYSTEMS.

Classification of Compensation Systems.

It has been the practice with writers upon the subject of workmen's compensation to classify the systems of the different jurisdictions with reference to the type of insurance established under, or evoked by, the system.[1] Thus the systems have been classified under such heads as voluntary insurance, compulsory insurance, compulsory mutual insurance, compulsory state insurance, state adjustment with free insurance, free insurance with state competition, free insurance with state guarantee, and the like. These designations are, no doubt, descriptive and they are certainly less disingenuous than the very ingenious nomenclature recently employed by representatives of the liability insurance interests in discussing the subject,[2] but they do not involve a recognition of the vital distinctions which form the real basis of classification. The real distinction is not between the classes of insurance but in the incidence of the initial liability. Where the liability to compensate the workman is thrown directly upon the individual employer the obligations and relations created are of a nature radically different from those which arise where the liability is thrown upon employers collectively, or where the liability is assumed by the state itself. And the essential character of every system, in theory and in practice, is determined by the question which of the three principles is adopted, individual liability, collective liability or state liability. Of the three the two last are the most nearly akin and there would be some reasons for classifying the different systems under two heads only, namely, individual liability and collective liability, the state liability system being considered merely a more widely diffused form of collective liability. There is, however, an important distinction between a system such as that of Germany where the state uses its compulsive power merely for the purpose of organization and a system such as that of the State of Washington where the state itself assumes the burden as well as the administration of the compensation. In practice it is, of course, possible to operate a state insurance system in such a manner as to render it to all intents and purposes a collective liability system. And on the other hand there is no doubt that a collective liability system under state compulsion secures by reason of the participation of the state, a stability which places it in many respects on a par with a state liability system.[3]

It should be observed also that the mere creation of state insurance facilities does not fix the character of the system as a state liability system. Thus in some jurisdictions the state competes on more or less equal terms with private insurance schemes for the patronage of employers insuring their individual liability.[4]

Such a system might be described as a state insurance system, but it is not a state liability system in the sense here employed.

It may be well to define further and distinguish the three classes of compensation systems, and to enumerate their respective advantages and disadvantages.

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[1] See Cd. 2458, p. 3; Bulletin 90, U.S. Bur. Lab., 720.

[2] In a memorandum submitted before the Federal Commission, U.S., by "Certain law members of the Committee of the Official Civic Federation," the individual liability system, of which the English Act is a type, was spoken of as "simple compulsory compensation," and other systems are referred to as more or less elaborate and complex developments of this type, while the fact is, as has been shown, that the individual liability plan is most indirect in its operation and complex in its relations and results. See Rep. Fed Com. U.S., 423.

[3] See, however, letter of Mr. Harold Preston, post, p. 77.

[4] *E.g.*, Sweden; see F. & D., 38.

Individual Liability.

Under an individual liability system the obligation to compensate the workman is, as has been pointed out, thrown directly upon the individual employer as an element of the relationship of employer and employee. The law implies a term in every contract by which the employer assumes an obligation more or less extensive to indemnify the workman for injuries received in the course of, or in connection with, the employment. The injured employee looks for relief to his employer, the latter being thus constituted an individual insurer of the workman against accident. Employers under such a system are, of course, permitted, and in fact encouraged, to insure themselves against their liability by some form of insurance. The contract of insurance in such cases, however, assumes the form of an undertaking on the part of the insurance company to indemnify, not the workman against loss by injury, but the employer against loss through the enforcement of the workman's claim against him as employer. The circuity of liability thus established involves many important consequences which will be noted presently.

The chief exponent and type of the individual liability system is the English Workmen's Compensation Act. There can be little doubt that the character of this Act was determined largely by the absence in England of facilities in the form of trade associations corresponding to those which were taken advantage of by Bismarck in the German legislation of 1884. And it may be assumed also, that the individualistic genius of the British nation and the reluctance to accept Socialistic doctrines and bureaucratic methods had their influence. While the English Act was confessedly intended to embody the principles of the German system it was hoped to render the principles more palatable by avoiding the use of compulsion. It was expected that the self-interest of the employer would supply the necessary incentive to take out insurance.[1] The essential character of the insurance thus induced, and the essential departure from the German collective liability principle, were perhaps not appreciated. It is needless to say that the results anticipated of the English Act have not been realized and that a large proportion of employers in England, and chiefly among those who need it most, carry no insurance whatever.[2] There is little doubt, also, that it was hoped under the English Act to induce the establishment of associations similar to those of Germany but on a voluntary instead of a compulsory basis.[3] This hope has been entirely dispelled and the tendency is rather towards the extinction of those schemes which existed before the passing of the Act.[4]

The English Act is in essence an employers' liability act, and not a workmen's compensation act in the modern sense of the term.[5] By throwing upon the individual employer a liability for damage not due to his fault it violates elementary principles of justice. It is not an accidental misfortune that the American constitutions render it difficult, if not impossible, to enact an Act of the English type. The constitutional provisions which create the difficulty are in reality expressive of principles of natural justice. A burden which may with justice be placed upon a group or class may be entirely unjust when placed upon an individual.[6]

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[1] See Rep. Fed. Com. U. S., 111.
[2] See Cd. 2208, p. 43.
[3] See Rep. Fed. Com. U. S., 112.
[4] See Cd. 2208, p. 23; Rep. Fed. Com. U. S., 112; F. & D., 27, 28, 46; 24th Rep. U. S. Bur. Lab., 1531, 1579.
[5] See Rep. Fed. Com. U. S., 110, 111, 270; Lass, 11.
[6] See Rep. Fed. Com. U. S., 69.

The report of the Commission of the State of Washington speaks of the individual liability scheme as follows: "Other Commissions have seemed to favor the placing of the liability directly upon the employer, that is to say they favor fixing a schedule of compensation to injured workmen and their families, and providing that in each case each employer shall pay the stated sum to the injured employee, or in case of his death, to his family, and it is expected (in fact, it is the case in New York, where an optional statute was this year enacted) that employers will then write employers' liability insurance to protect them in such cases, and thereby distribute the burden. This plan has not met with the favor of your Commission for the reason that it still retains the elements of waste and litigation. It seems to us better, for both employer and employee, that all the money that employers pay out on account of such cases shall, every cent of it, go to the injured workman."[1]

One very serious difficulty in connection with a system of individual employers' liability is, as already pointed out, the danger of the employer's becoming insolvent after a period of years and after the business has acquired a list of compensation pensioners who are being supported out of its pay-roll. In order to meet this condition the English Act of 1897 gave the workman a first charge on any sum due from the insurance company. The Act of 1906 provides that in case of the bankruptcy of an employer his rights as against the insurance company shall rest in the workman. It needs only a moment's reflection to realize the immense complexity which such provision may give rise to. Take for example the case of a commercial company which has accumulated a number of pensioners. In case of bankruptcy or winding up the pensions could doubtless be in some way capitalized and assured to the workmen. But what is there to prevent the company from disposing of its whole assets and undertaking without going into bankruptcy? In order to prevent this it would be necessary to give the workman a preferential lien upon the assets of the company, which would follow the assets into the hands of an innocent purchaser. This again would tie up the assets of the company and prevent them from being sold, unless some scheme could be formulated for placing a reserve fund in the hands of trustees or the Government against the claims of pensioners. If such a system of liens were adopted a railway, for instance, would be unable to sell any of its rolling stock without satisfying the lien of injured workmen and their dependents. This is the fatal defect of such systems as that just adopted by the Congress of the United States. It involves one of three alternatives: either the compensation payments are subject to the danger of being cut off by a sale of the railway's assets, or the assets must be subjected to a lien, or the capitalized value of the assets must be set aside in a fund.

The defects of the individual liability system have already been indicated. They may be summarized as follows:[2]

1. An individual liability system affords no assurance of solvency.[3] It fails where and when it is most needed, namely, in the case of the smaller and more improvident classes of employers[4] and in the case of larger accidents to the larger employers.[5]

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[1] See Rep. Wash. Com., 6.

[2] See Rep. Ohio Com., Pt. I, p. 16; Rep. Mich. Com., 132, 133; Rep. Fed. Com., pp. 283, 650-5; F. & D., 17.

[3] S. & E., 179.

[4] See Cd. 2208, p. 112.

[5] In the ordinary policy in this country companies limit their liability on a single accident to $5,000. For additional protection higher rates are charged.

2. The individual liability system handicaps the smaller employer by throwing upon him the risk of being rendered insolvent by an accident.[1] It is on this account not adapted for extension to such occupations as farming, which is in this country usually conducted with only one or two employees.

3. An individual liability system affords very little direct incentive to prevention. The competition for business renders it impracticable to classify, and discriminate amongst, risks on the basis of relative hazard, the result being that the business is bulked and the more careful employer made to bear the insurance of the less careful.[2]

4. Because of the circuity of obligation involved in employers' liability insurance the individual liability system is extremely wasteful.[3]

5. The individual liability systems do not afford proper facilities for the administration of periodical payments. The responsibility of making these payment cannot well be assumed by the smaller individual employer, and the constant tendency of employers and insurance companies is to commute the payments for a lump sum and thus impair the efficiency of the system.[4]

6. The individual liability system creates a hardship for certain classes of workmen by militating against the employment of older and partially incapacitated workmen.[5]

7. The workman's recourse being in each case against the individual employer every claim for compensation involves a direct contest inimical to harmonious relations.[6]

8. The individual liability system involves a violation of natural justice in throwing upon the individual employer liability for something which may not have been occasioned by his fault, but which on the contrary may have been occasioned by the person making the claim.[7]

9. Experience shows that an individual liability system cannot be permanent but must apparently sooner or later give way to a system of collective liability.[8]

10. The individual liability system gives rise to an anomalous form of insurance prejudicial in many respects to the interest of both employers and employees.[9]

11. An individual liability system cannot be conducted on the current cost or assessment plan, but requires a setting up of reserves against future periodical payments.[10]

12. The individual liability system even under simplified legal process involves an excessive and unnecessary amount of litigation.[11]

Collective Liability.

Under a collective liability system the obligation to compensate the workman is thrown upon employers collectively in groups. The method of grouping varies under different systems. In Germany employers are divided into some 114 groups according to industries. In Austria the primary division is geographical, but in

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[1] See Rep. Conf. Com., 19; Interim Rep. Ont. Com., 165.
[2] See F. & D., 136, 138.
[3] See Cd. 2208, 68, 86; Rep. Fed. Com. U.S., 112; F. & D., 15, 17.
[4] S. & E., 231; Cd. 2208, 39, 40; F. & D., 16.
[5] S. & E., 179, 180, 253, 254; Cd. 2208, 1904, 39; F. & D., 15, 16, 48; Mackenzie vs. Iron Trades Emp. Ass'n., 1909, Scotts L. T., 505.
[6] See F. & D., 16, 17, 46; Rep. Fed. Com. U.S., 727.
[7] See ante, p. 19.
[8] See ante, p. 40.
[9] See post, p. 57.
[10] See post, p. 63.
[11] See S. & E., 207; Beven on Workmen's Compensation, 4th ed., pref., 13.

each geographical district employers are subdivided by industries. Under the Act of the State of Washington the grouping is by estimated hazard. Provision is made in all these systems for levying upon employers insurance premiums according to the hazard of the employment, and out of the fund thus raised compensation is paid directly. The injured workman looks for compensation not to the individual employer but to the association or group of employers. Adjudication is in these systems merely a matter of establishing a claim upon the fund and does not involve a legal contest between the employer and the workmen.

The principle of collective liability has been embodied in a number of European systems and in some of the States of the United States. The Act recently adopted in the State of Massachusetts is evidently intended to embody the principles of the German Act and similar Acts have been introduced in Michigan and New York. The German system being the oldest and most elaborately and scientifically developed is usually cited as the type[1] but there are many variations in the application in different jurisdictions, of the basic principles of the German system. It should be observed that the German system is not a state insurance system,[2] the state participates only to the extent of compelling employers to organize. It also assists in defraying the expense of compensation. Having compelled the employers to organize the State stands aside and acts only in a supervisory capacity.[3]

It has been pointed out[4] that the Act of the State of Washington while in form a State liability Act is in reality based upon the same principles as the German system, with this variation, that instead of merely organizing the employers the State provides the machinery for administration and does not leave this to autonomous action on the part of the various groups of employers. The State does not guarantee the payment of the compensation though doubtless a practical guarantee exists in virtue of the existence of machinery for levying the cost upon employers collectively.

The collective liability systems are uniformly conceded to be the most satisfactory both in theory and in practical results. The type system, that of Germany, is the outstanding example of a successful solution of the problem of accident compensation.[5] Representatives of the liability insurance business in the United States frankly admit the excellence of the German system, and Dr. Friedensburg, whose criticisms of certain details of the German system have been given wide circulation by the liability insurance companies has declared that he would be a "blind fool" who would "fail to recognize that the blessings of the insurance system cannot be fully described even by the use of unqualified laudation."[6] The advantages of the collective liability system of compensation will readily appear by a reference to the disadvantages of the individual liability system.

1. The collective liability systems even without State support, afford a practical guarantee of solvency because of the wide incidence of the liability, the only danger being that of having the classes too small.

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[1] See analysis of German system, post, p. 52.

[2] See F. & D., 30.

[3] There is, however, an element of a State guarantee in the German system, arising out of the provision for the taking over by the State of the obligations of insolvent trade associations.

[4] See post, p. 77.

[5] S. & E., 22, 148, 149, 251, 282; F. & D., 139; Rep. Fed. Com. U. S., 104, 118, 279, 1425; Cd. 2458, p. 41; Rep. Mich. Com., 33; Rep. Conf. Com., 21; Rep. Ohio Com., Pt. II, p. 312; Cd. 2208, p. 23; 24th Rep. Bureau of Statistics, New Jersey, 165; 4th Special Rep. U. S. Bur. Lab., 285, *et seq.*

[6] Friedensburg, "Praxis der Deutschen Arbeiterversicherung, 46, see post, p. 86.

2. Under a collective liability system large and small employers stand on an equal basis, both in the matter of rate and of risk. The system would not be unduly onerous on small employers such as farmers.

3. The collective system has shown the best results in inducing accident prevention. The classification of employers in industry-groups, creates a strong incentive to co-operative action in the direction of prevention, the less careful employers being compelled or induced to measure up to the standard of the most careful on pain of paying a higher rate or other penalty.[1]

4. The collective system is simple, direct and economical in its operation. By eliminating the element of contest between the employee on the one hand, and the employer and the insurance company on the other, practically the whole of the waste is eliminated and the expenses of administration reduced to a minimum.

5. The collective system affords the very best facilities for administration of payments by the week or by the month and discouragement of lump sum payments.

6. The collective system does not afford the same incentive for discriminating against older or practically disabled workmen. No rule supporting such a discrimination could be justified in the face of public sentiment.[2]

7. The elimination of a direct contest between employer and employee removes a source of friction and tends to more harmonious relations.

8. The collective liability system gives real and effective recognition to the doctrine of professional risk by placing the burden of compensation literally upon the industry; and no undue amount of unjust obligation or liability is placed upon the individual employer.

9. The only systems which have been placed upon any sound basis, and which promise any degree of permanency are the collective or State systems, and expert opinion strongly favors the collective principle as the only satisfactory solution.

10. The collective liability system constitutes the purest form of insurance, the risk being spread over the widest possible area and the payments of premiums and benefits being absolutely direct.

11. The collective liability system can be operated on a current cost plan with its attendant advantages—simplicity and economy of operation and tendency to reduce hazards.

12. As the employee's resource is simply against a fund it does not involve the determination of any serious private rights or liability, and elaborate and expensive legal process is unnecessary.

State Liability.

Under a state liability system the obligation of compensating the workmen for injuries is assumed by the State itself, and the cost is levied upon employers or employers and workmen jointly by the exercise of the taxing power of the State. The workman looks for his compensation directly to the State, and this marks the essential character of a state liability system.

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[1] See F. & D., 138, 139.
[2] Interim Rep. Ont. Com., 407.

Attention should be called to the distinction between a State liability system and a State insurance system. A state insurance system is not necessarily a state liability system. The law may, as it does for instance in Sweden, cast upon the individual employer the liability to compensate, the state at the same time providing an insurance institution in which he may insure himself against that liability. Such a system is an individual liability system. The employer himself is individually liable for the payment of the compensation whether the insurance is compulsory or optional. Again the law may throw the liability primarily upon the employer, and provide that upon payment of the insurance premium, but not sooner, the obligation to compensate shall be assumed by the state. Such a system might be classed as a state liability system; but the purest form of state liability is where the state itself assumes the whole obligation and undertakes responsibility of providing the necessary funds by compulsory collection of the insurance premiums. Such a system is exemplified in the Act of the State of Washington which provides for the payment of compensation out of a fund administered by a State Department and collected by imposing the necessary rates upon the pay roll of industries. The State of Ohio, on the other hand, is a State liability system of the optional type, and throws upon the employer a liability of which even the payment of his premiums to the state department does not wholly relieve him.

In some jurisdictions the plan has been adopted of leaving it optional with the employer whether he will insure in the institution provided by the state or insure in some private institution. This plan also involves the placing of the primary liability to compensate upon the individual employer, though the payment of the premium may transfer the obligation to the institution, state or private, undertaking the insurance, and relieve the employer from further individual liability.[1] The State system thus operates in competition with the private systems, with the natural result that the private companies in many cases offer lower premium rates than the State system. This is possible only in two ways, by selecting the better risks and leaving the poorer to the State system, or by running at a loss. In liability insurance it is much easier to run for a period of years at an undetected loss than in most other classes of insurance. This is particularly the case in a system where compensation is paid periodically and spread over a length of time. The inevitable result of allowing private companies so to carry on business would be insolvency with the loss falling upon the very persons whom a compensation system is designed to protect. The great and insuperable difficulty of leaving compensation insurance of whatever type in private hands is that it involves the assumption by the State of an obligation more onerous than that of establishing a State insurance system, namely, that of supervising the private insurance institutions, the form of their policies and the adequacy of their reserves. The task of compelling such institutions to set up adequate reserves presents much greater difficulty than the direct administration of the insurance funds by the State itself. The difficulty of State supervision of private companies is increased by the lack of experience in this class of insurance and the lack of any scientific basis for rates;[2] under a plan of compulsory assessment upon the current cost plan experience is entirely unnecessary and the speculative element is entirely eliminated.

It must also be remembered that one of the chief advantages of a State or collective liability system arises out of its size and the breadth of the basis of

[1] *E. g.*, Ohio, Massachusetts.

[2] See post, p. 59.

insurance thus rendered possible. Where this basis is divided with a number of other systems and organizations are multiplied the advantage is correspondingly minimized and in addition the State system is subjected to the competition of the private companies who can afford to take larger risks of failure. In the State of Ohio at the present time liability insurance companies are in competition with the state system, carrying risks at a rate in many cases not more than one-fifth that charged by the same companies in other States where the compensation laws are less drastic, but where there is no compensation from the state system. This naturally prejudices the operation of the state department and very probably means for the liability companies a loss which must be made up by increased rates in the other states. But notwithstanding the difficulties and disadvantages under which the state insurance systems of this class have to contend, the experience has been that they drive the private schemes out of business.[1] This is the result which may fairly be anticipated for such systems as that of Massachusetts, Michigan, and New York; but in the meantime they involve a condition of immense confusion, waste, and general dissatisfaction for the community in general, and inevitable financial loss to the insurance companies or the compensation pensioners.

The advantages of a collective system are largely if not wholly attained in a state system, the difference between the two forms of systems being theoretical rather than practical.[2] If a state system were to be administered on the same lines as many other departments of state activity there would of course be grave danger of abuses by reason of political and other undue influences. It is uniformly recognized that the administration of a compensation should be as far as possible removed from such influences. Accordingly the approved form of administration is by commission, independent, as far as possible, of direct political influence. Some jurisdictions have gone so far as to provide that the members of the commission must not all be of the same political party.[3] In so far as the state system can be made thus independent it becomes practically equivalent to a collective system. In fact, it has been said of the Washington system that it is not so much a state liability system as a system of collective liability administered by the state.[4] The absolute guarantee of the state is unnecessary because the state has always the means of collecting the necessary funds by assessing employers.

Analysis of Some Systems.

While the different systems of the world can and should be classified under the heads above suggested there is infinite variety in the details and form of their operation. Below is given an outline of the chief features of a number of systems which may be regarded as types.

The English System.

The English workmen's compensation Act is an individual liability act; every workman within the scope of the act is entitled to be compensated by his employer for personal injury, for accident "arising out of and in the course of the employment," provided the injury is not attributable to "serious and wilful misconduct" of the workman and provided the injury disables the workman for a

[1] See F. & D., 38; Rep. Atlantic City Conf., 296.
[2] See Rep. Atlantic City Conf., 300.
[3] *E.g.*, Ohio.
[4] See post, p. 77.

period of at least one week from earning full wages at the work at which he was engaged. The workman looks directly to his employer for his compensation. Provision is made for employers relieving themselves of their individual liability by organizing insurance or benefit "schemes," but the conditions surrounding the organization and approval of these schemes are so onerous that practically no advantage has been taken of the provision; instead many employers insure themselves against their liability by "employers' liability insurance," the insurance companies engaging for a specific rate based upon the pay roll, to indemnify the employer against liability in respect of accidents that occur, and to assume the defence of any proceedings that may be brought against the employer to enforce compensation.

All occupations are covered by the Act, but an exception is made of (*a*) persons not employed in manual labor whose remuneration exceeds £250 per year; (*b*) persons whose employment is of a casual nature; (*c*) members of the employers' family dwelling in his house.

In case of injury resulting in death the compensation under the English Act consists of reasonable expenses for medical attendance and burial to a maximum of £10 ($48.67) and a lump sum payment equal to £150 ($729.98) or three years' earnings, whichever is larger, up to a maximum of £300 (1,459.95) apportioned amongst the dependents of the deceased. Where the injuries result in disablement the compensation is a weekly payment on the basis of one half the impairment of earning capacity but not exceeding £1 ($4.86) per week.

By agreement between the parties and with the consent of the court weekly payments may be commuted for a lump sum and this appears to be the practice in the majority of cases; in case of dispute over a claim for compensation the workman has recourse to proceedings in the county court or to arbitration, and from the decision of these bodies and with their consent an appeal lies in questions of law to the Court of Appeal.

Many of the features of the English Act were introduced by way of ill-digested amendments passed in the teeth of the recommendations of investigating committees of Parliament. The whole system represents a series of compromises in attempting to operate a principle which is now generally recognized as inadequate. The following passage from the report of the Departmental Committee of 1904 speaks for itself:

"But even if legislation in the direction indicated in the last paragraph is adopted the difficulty and danger arising from the insolvency of the employer will not be completely met. For there is no obligation upon him other than that of enlightened self-interest compelling him to insure, and, as has been pointed out, there are many employers, and there are likely to be more, if the Act is extended, who through ignorance or recklessness or inability will not insure, or if they insure at first will not keep up their insurance; this difficulty, and indeed, many other difficulties to which the present system gives rise, could only be solved by the substituting for the personal liability of the individual employer the security of a fund the solvency of which was for all practical purposes assured. The problems how such a fund is to be provided, how employers are to be induced or compelled to insure their workmen, and how the workmen are to be given direct recourse to such a fund may have to be faced in the future, but in strictness, the attempt at their solution lies beyond the scope of this reference. We have considered it to be our duty to accept the principle of the Act of 1897, imperfect as we believe it to be. As has been often pointed out the scheme of that Act was to cast upon the employer the duty of providing the compensation, leaving him to protect himself if not

wealthy enough to bear his own burden by the ordinary methods of insurance. We have recommended changes in the law which we think may advantageously be made in carrying out this principle. At the same time we have indicated from time to time the inherent difficulties involved in its application. It is not improbable that in the future the state will have to take upon itself more extensive functions in relation to accident insurance. We have indicated in the preceding paragraphs that there is a strong case for legislation so as to give greater security for the solvency of commercial insurance companies. Many witnesses have suggested that some system of national insurance should be established which should relieve employers from all personal liability except that of providing the necessary funds. Any such proposal would require and will doubtless hereafter receive the fullest consideration from the Legislature. It may be that the state should establish or regulate a system of insurance which would provide an opportunity for every employer and for every workman to obtain complete security. It may be that a state policy might protect the employer from all personal liability except the payment of the premium. It may even be that ultimately some form of compulsion might be adopted requiring all employers to insure their workmen in some association under state regulations. It may be that under such a system larger benefits than those given by the present act might be provided for, but in that case it would seem to follow that some contribution, proportionate to the increase of benefits, should be made by the workmen to the insurance fund. These and similar questions are probably in prospect, but it would be premature and beyond our commission to discuss them. We can only indicate that, beneficial as we believe the legislation of 1897 to have been on the whole, we do not think it can be regarded otherwise than as a step in the direction of a more comprehensive system."[1]

The German System.

The accident compensation system of Germany is a collective liability system, liability to compensate being imposed, not upon employers individually, but upon associations of employers, formed under state compulsion and supervision. The accident compensation system is a part of a larger insurance system, embracing sickness insurance, old age insurance and unemployment insurance, as well as accident insurance.

For the first thirteen weeks after the occurrence of an accident compensation is paid out of the sickness insurance fund, which is raised by joint contribution in equal portions from employers and workmen. After the first thirteen weeks compensation is paid out of the accident insurance funds which are raised by contribution from employers only.

Employers are grouped according to industries into mutual trade associations, (Berufsgenossenschaften) which are practically mutual insurance companies; the insurance funds are raised by assessments upon the members of these associations according to the pay-roll. The actual payment of compensation is made through the Post Office and the money for compensation payments is advanced by the Post Office on the order of the Directors of the Trades Associations. These advances are liquidated at the end of the year by the trade associations and the amount of the advances, together with the cost of administration and the amount required to be set aside for the reserve fund, is assessed upon the members of the trade associations, so that not the capital value of the pensions but only the actual payments out during the previous year are collected.

[1] Cd. 2208, p. 123.

The associations have, in addition to the power of fixing rates and making assessments, the power to make and enforce preventive regulations and to employ expert inspectors and specialists in accident prevention and to provide medical and surgical aid. Each trade association elects its own board of directors to manage its insurance fund, but is subject to the general supervision by the Imperial Insurance Department.

Injured employees or their dependents apply for their compensation directly to the directors of the trade association. In case of dispute as to the right to, or the amount of, compensation an appeal lies to a court of arbitration with a final appeal to the Senate of the Imperial Insurance Office.

The German system covers all occupations, including shipping, agriculture and domestic service. It covers employees in receipt of a yearly wage of 3,000 marks, ($714) or less; but provision is made for the voluntary insurance of employees in receipt of a higher wage and also for small employers who desire to insure themselves.

Compensation is granted for all injuries occurring in the course of employment, unless the accident has been intentionally brought on by the injured person or his dependants, or unless it is the result of an act which has been judicially pronounced a crime or offence.

The benefits under the German system are: (A) In case of disability, from the fourteenth week after the accident (1) free medical and surgical treatment as well as necessary appliances such as crutches, artificial limbs, etc; (2) an allowance during disability of 66 2-3 per cent. of the impairment of earning capacity; (3) if the workman is not only disabled from working but helpless and requiring attendance an allowance of 100 per cent. of the former annual earnings.

(B.) In case of death (1) a funeral benefit equal to one-fifteenth of the annual earnings, but not less than 50 marks ($11.90); (2) an allowance to dependents of not more than 60 per cent. of the annual earnings as follows:

(*a*) To the widow until death or re-marriage, or to the dependent widower or to each child up to the completion of the fifteenth year, 20 per cent. of annual earnings; on re-marriage the widow receives a settlement equivalent to three years' allowance.

(*b*) Where the 60 per cent. is not exhausted by the widow and children, parents or grandparents wholly or partially dependent are entitled to an allowance not exceeding 20 per cent.

(*c*) And where the 60 per cent. is not wholly exhausted by widow, children, parents or grandparents, grandchildren, wholly or partially dependent, are entitled to an allowance not exceeding 20 per cent. each to the completion of the fifteenth year.

The Washington System.

The system of the State of Washington is a state insurance system. The obligation to compensate workmen for injuries is assumed by the state itself, through an Industrial Insurance Board. Compensation on a scale laid down in the Act is paid out of a fund created by contributions levied upon employers as a tax. Contributions to the fund are levied in accordance with a schedule fixed by the Act in which different classes of occupations are graded according to hazard and the rates fixed as a percentage on the pay roll.

The Act applies only to "extra-hazardous" employments, this limitation being considered necessary owing to the constitutional restrictions upon the State

power of legislation, but provision is made for voluntary insurance by the employers not included in the compulsory operation of the Act. Within the class of industries enumerated the Act applies to all employers, large and small.

The compensation schedule provides for (*a*) Expenses of burial not exceeding $75; (*b*) a payment of $20 per month for life to the widow or invalid widower with an addition of $5 per month for each child under the age of 16 years, the total not to exceed $35 per month. The estimated capital amount of this payment is $4,000, which sum is set apart out of the general fund in each individual case as a special fund to meet the payments, any surplus or deficit being adjusted with the general fund. The capital amount of $4,000 may in some cases be paid out in a lump sum; (c) Permanent partial disability is compensated by a lump sum payment corresponding to the extent of the injury but not exceeding $1,500. Instead of a waiting period the Washington Act provides that no compensation shall be payable unless the loss of earning power exceeds 5 per cent. and there is no provision for temporary partial disability. Claims for compensation are adjusted by the state insurance department, subject to appeal to the Superior Court of the county.

The State Department consists of three commissioners, appointed by the Governor, with a staff of auditors, assistants, etc. The Department has power to employ one or more physicians in each county for the purpose of efficient medical examinations.

Safety regulations are enforced by the imposition of penalties payable to the insurance fund.

The common law remedies of the workmen are entirely merged in the remedy under the Act; but where an employer refuses or neglects to pay his insurance assessments the workman may bring an action against the employer, the latter being in such cases deprived of the defence of common employment and assumption of risk.

The Norwegian System.

The Norwegian system is a state insurance system. Employees are insured in a state institution and apply to it for their compensation.

The insurance scheme covers practically every hazardous industrial and commercial enterprise except farming and fishing. The various industries are classified into groups according to the risk of the employment and employers pay premium into the State Insurance Institution commensurate with the risk and based upon the number of the employees and size of the payroll.

For the first four weeks of incapacity, unless the injured employee has made special provision for himself, the employer is individually liable to make provision. The State Insurance Institution compensates the employees for the injuries resulting in total disability for a period of not more than four weeks, by weekly payments equal to 60 per cent. of the basic wage but in no case less than 150 crowns ($40.20) per year. If the annual earnings of a workman are more than 1,200 crowns a year the compensation payments are based on that amount. In the case of disability more or less permanent the weekly payments may be commuted under certain circumstances for a lump sum representing not more than five years' payments.

Where the injury to the workman results in death the State Insurance Institution pays the cost of burial to the amount of 50 crowns ($13.40) and allows the following pensions to the survivors. (*a*) To a widow an amount equivalent to 29 per cent. of the injured person's wages; (*b*) to each child an allowance of not more than 15 per cent. of the workman's wages up to the completion of the 15th year, the

total paid to the widow and children in no case to exceed 50 per cent; (*c*) where the 50 per cent. is not exhausted by widow and children, to dependent ancestors an allowance of not more than 20 per cent. each.

The State Insurance Institution is controlled by a Board of three members—a Managing Director and two Associate Directors appointed by the King. The latter retire one at a time, every three years, after six years' service, but retiring members may be re-appointed.

Cases in dispute are settled by the Directors of the State Insurance Institution. An appeal lies from the Institution to a special commission consisting of seven members, three appointed by the King, and two each representing employers and employees appointed by Parliament, (Storthing). This commission constitutes a final court for all matters of assessment but a further appeal may be made to the regular courts on questions of law.

The pension payments are made largely through the agency of the Post Office.

The adjustments of claims as well as the investigation of industrial establishments and a large share of the general administration of the Act is in the hands of "Inspectors" appointed by the authority of the Communes but directly responsible to the State Insurance Institution.

The rates of insurance are based upon the capitalized value of the pensions accruing by the accidents of each year and not, as under the German system, upon the actual payments made during the year. A reserve fund is therefore set up which is intended to provide for the liquidation of all claims for injuries accruing in the past.

The Ohio System.

The Ohio system is an individual liability system with optional state insurance. Employers are liable to an action at law without the protection of the defence of contributory negligence, common employment, and assumed risk. Upon payment of an appropriate insurance premium this liability is assumed by the state and the employer is freed from liability save for the wilful acts of himself or his agents, or the breach of any statutory regulations, in which cases the employee has the option, instead of applying to the Board for his compensation, to bring an action at law. The State Insurance Department is controlled by a Board known as the "State Liability Board of Awards" consisting of three members, not more than two of whom may belong to the same political party. The members are appointed by the Governor for six years, one member retiring every two years.

The Act extends to all establishments in which five or more workmen or operators are regularly employed and where the employer has elected to come under the scheme. Such establishments are insured by the Board at rates estimated by the Department as being adequate to carry the risk.

Of the premiums paid to the department the employer is authorized to deduct ten per cent. from the wages of the workmen.

Employees coming under the Act are entitled to compensation for all injuries sustained in the course of their employment provided the injury has not been self-inflicted.

The schedule of compensation is as follows:

(*a*) Medical and hospital expenses not exceeding $200.

(*b*) In case of death funeral expenses not exceeding $150.

(*c*) A compensation allowance as follows:

(A) in case of death. 1. To wholly dependent persons an allowance

(after the first week) of 66 2-3 per cent. of the average weekly wages, for a period of six years after the death, the whole to be not more than $3,400 and not less than $1,500. 2. To partly dependent persons an allowance (after the first week) of 66 2-3 per cent. of the average weekly wages for all or such portion of six years as the Board may determine, the whole not to be more than $3,400 and not less than $1,500.

(B) In case of temporary or partial disability an allowance to the employee (after the first week) of 66 2-3 per cent. of the impairment of earning capacity, not more than $12 per week and not less than $5 per week for six years from the date of the injury.

(C) In case of permanent total disability an allowance to the employee (after the first week) of 66 2-3 per cent. of the average weekly wages, not more than $12 per week, and not less than $5 per week until death.

The Board has power to commute periodical payments into one or more lump sums.

The Board has full jurisdiction to adjust and re-adjust all claims for compensation, and its decision is final except where compensation is entirely denied on the ground that the injury was self-inflicted or did not arise in the course of the employment or the like, in which case the applicant has the right to bring an action against the Board itself.

An employee who exercises his option to institute proceedings in the court as above, thereby waives his right to compensation from the Board; and conversely by applying to the Board a workman waives his right to institute proceedings at law.

The Massachusetts System.

The Workmen's Compensation Act of the State of Massachusetts establishes a collective liability system under the supervision of a department of the State. The Act abrogates the common law defences, contributory negligence, common employment and assumption of risk. If the employer elects to insure in the Massachusetts Employers' Insurance Association which is managed by representatives of the employers, the injured workman has to apply directly to the Association for compensation and the individual employer is under no liability.

All employees of employers who have elected to come under the jurisdiction of this Act are entitled to the benefits of this Act unless they have given due notice to the contrary and provided that the industrial accident has (1) arisen out of and in the course of employment, (2) leads to incapacity for a period of less than 2 weeks, (3) was not due to the serious and wilful misconduct of the workman.

The Act furnishes the following benefits:

(A) In Case of Death.

(1) Where the injured workman leaves no dependents, payment for last sickness and burial not to exceed $200.

(2) Relatives wholly dependent, a weekly payment equal to one-half the workman's average, but not less than $4 and not more than $10 per week, for a period of 300 weeks from the date of the injury.

(3) To relatives partly dependent a weekly payment proportionate to the degree of dependency with due regard to the pension allowed to relatives wholly dependent.

(B) In Case of Incapacity.

(1) If total incapacity results from the injury the workman shall be allowed a pension equal to one-half his wage, to be not less than $4 and not more than $10 for a period of 500 weeks, the total amount of such pension not to exceed $3,000.

(2) Where partial incapacity results to the workman from his injury he shall be allowed a pension equal to one half his impaired earning power, such pension not to be more than $10 per week for a period of 300 weeks, and total amount of such pension not to exceed $3,000.

(3) In case of specific injuries such as loss of feet, hands, eye, etc., pension for stipulated periods according to schedule are to be allowed.

Weekly payments may be commuted after six months into a lump sum by the agreement of the parties but subject to the approval of the Industrial Accident Board.

The Industrial Accident Board consists of three members, appointed by the Governor of the State for a period of six years, one member of the Board to retire every second year. It is the duty of this Board to supervise the work of the employers' Insurance Associations. Where the injured workman and the Industrial Insurance Association fail to arrive at a settlement as to the amount of the benefit to be allowed, the Industrial Accident Board calls for the formation of a committee of arbitration. This committee consists of one member of the Board and a representative of each party interested. An appeal lies from the arbitration committee to the Industrial Accident Board and a further appeal to the Supreme Judicial Court, the latter on questions of law only.

If an employee is injured by reason of the serious and wilful misconduct of the employer, or persons regularly entrusted with exercising the power of superintendence, the amount of compensation is doubled. In such case the employer who has subscribed to the employee's Insurance Association repays the Association the extra compensation paid to the employee.

Employers' Liability Insurance.

Where the obligation to compensate workmen for injuries is thrown directly upon individual employers it is customary, and it is in fact assumed to be necessary, for the employer to insure himself against his liability in an insurance company or institution. Reference has been made to a theory which has been advanced that employers should not be allowed thus to insure their liability lest the incentive to prevention of accidents be minimized.[1] This theory is of course entirely contrary to the whole genius of workmen's compensation as generally understood. If applied in practice it would not only result in depriving workmen in a large percentage of cases of all compensation, but would have a tendency opposite to that ascribed, for the greatest preventive effort can be induced only by the invocation of co-operation and specially directed effort. In any practical conception of an individual liability scheme insurance is a necessary adjunct.

Employers' liability insurance first arose in England after the Employers' Liability Act of 1880. While there were isolated instances of such insurance before that time there had not been in England or elsewhere any general practice amongst employers of insuring themselves against possible liability in respect of personal injuries to their employees. Upon the passing of the Act the well-known "Lloyds" at once began to do a considerable business in liability insurance and other com-

[1] See ante, p. 17.

panies sprang up throughout Great Britain. The Act of 1897 brought with it a great extension of this class of insurance. Reports of the Board of Trade show that there are now fifty-six British companies engaged in employers' liability insurance. A corresponding development has taken place in the United States and in Canada. The Report of the Superintendent of Insurance for the Dominion shows that there are twenty companies engaged in employers' liability insurance business in this country. Eleven of these are foreign companies and of the remainder some are subsidiary to foreign companies.[1] During the year 1911 there were in force in Canada employers' liability policies aggregating $86,641,045, of which $28,687,400 was held by Canadian companies. None of the Canadian companies are engaged exclusively in employers' liability insurance but carry on other branches of insurance as well.

Employers' liability insurance has been defined as "the undertaking of liability under policies insuring employers against liability to pay compensation or damages to workmen in their employment."[2] Such insurance is in its nature entirely different from accident insurance though the two classes of insurance are frequently carried on by the same company, and in fact sometimes combined in the same policy. The essential difference between the two types of insurance is so important in considering workmen's compensation systems and is so commonly misunderstood or ignored that it should be the subject of careful observation. Accident insurance would insure the *workman* against loss resulting from accident. Employers' liability insurance insures the *employer* against loss from being compelled to pay compensation or damages to his workman. Accident insurance is for the protection of the workmen; employers' liability insurance is for the protection of the employer. Where a workman is insured against accident his recourse, in case of loss, is directly against the insurance company. Where an employer has insured in an employers' liability company the workman's recourse in case of injury remains directly against the employer. The liability policy affords the workman no protection, but on the contrary enlists on the side of the employer the experience and superior facilities of the insurance company in contesting claims. For the practice is for the insurance company to assume and conduct the defence of any action that may be brought by the workman to enforce his rights against the employer. The employer on the other hand is not in a position to deal unrestrictedly with his employees in settling claims which may appear to him deserving, lest the case should not commend itself to the insurance company as one involving a legal liability on the part of the employer. So far as the workman is concerned, therefore, workmen's compensation is either negative in its operation or positively detrimental.

In other and less direct ways liability insurance is also positively detrimental to the employee and this fact is generally recognized. Employers are often prevented by the terms of their policies from engaging older or partially incapacitated men for the reason that they increase the hazard.[3] Again, insurance companies are accused of exerting undue pressure in making settlements. The representative of the company as a matter of business siezes the psychological moment when the injured man or his dependents are most in need to offer a settlement for ready cash, which is almost as certain to be disadvantageous to the beneficiaries as it is advantageous to the company.[4]

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[1] See Rep. Supt. Ins. 1911, p. 57.
[2] McGilliveray, Insurance Law, 28; F. & D., 8.
[3] See Conf. of Com., 64; F. & D., 16; Rep. Atlantic City Conf., 38; ante, p. 46.
[4] See S. & E., 231; Cd. 2208, 39, 40; F. & D., 16.

It follows from the nature of the insurance that the risk is subject to infinite variations. In life insurance there is always a firm basis in the mortality tables which, though subject to some fluctuations, do not substantially vary in different localities or at different times. Employers' liability on the other hand is subject to a variety of factors and conditions many of which are not susceptible of anything like accurate calculation. First and foremost is the question of the operation of the laws under which the liability is imposed; whether and to what extent the liability rests upon fault on the part of the employer; whether and to what extent it is affected by fault on the part of the employee; what defences are available to the employer in an action by the workman; whether the remedy of the workman is a single one or whether he has a choice of two or more remedies; to what extent the method of adjustment involves expense in litigation or otherwise; whether the method of adjudication permits of punitive or exemplary damages. Another factor is of course the hazard or probability of the occurence of an injury. This depends primarily upon the nature of the occupation and is subject also to other influences such as the degree of care exercised in guarding machinery, etc.; the degree of strictness in enforcing rules of safety, the speed of operation, the nationality, age, sex and general character of employees, as well as a variety of circumstances constituting what is generally known as the "moral hazard." In the third place the character of the risk is dependent upon the schedule of pecuniary benefits which the workman is entitled to receive, or the customary scale of damages allowed by court or jury. Of the three large classes of factors mentioned this might appear to be the most readily calculable; but where the compensation system involves periodical payments extending over a considerable period, further considerations are introduced such as the probability of the duration of life of incapacitated persons, the probability of the workman's being married, the probable number of children or other dependents, the probable duration of widowhood with a variety of other factors which may influence the duration of the compensation period. Absence of reliable statistics or experience in any one factor involves an element of speculation beyond the legitimate risk which it is the province of insurance to equalize. But in liability insurance many of the prime factors have not been, nor in fact do they perhaps admit of being, subjected to scientific treatment. The ephemeral nature of the laws covering employers' liability, the wide extent of the territory covered by most liability insurance companies, and the diffusion of the business in a given territory amongst a large number of insurance institutions has thus far stood in the way of any attempt at uniformity such as has been attained through the underwriters' associations in other lines of insurance. The speculative and unscientific character of the employers' liability insurance rates is generally recognized[1] and is acknowledged by the insurance companies themselves.[2] It is understood indeed that a movement has just been begun with the object of forming an association of employers' liability companies for the purpose of dealing with rates,[3] but the plans of this movement as outlined in the insurance journals reveal not only how absolutely inadequate and unscientific has been the treatment of rates up to the present, but also how difficult it is to place them upon a more satisfactory basis.

The primary effect of unscientific rating is to penalize the less hazardous industry and the more careful employer, as against the more hazardous industry and

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[1] See S. & E., 227, 242; Rep. Wis. Com., 40; Rep. Ill. Com., 169.

[2] See 24th Rep. U.S. Bur. Lab., 1544, 1548.

[3] See "The Iron Age," 2nd May, 1912, p. 1,094.

the less careful employer. This weakness of the liability insurance system has led many progressive employers to abandon it altogether and carry their own risk. With the larger employers this is, of course, quite practicable, but the smaller employer must either submit to the unjust rate or carry an undue risk.

One difficulty that stands in the way not only of establishing a scientific basis of rates, but in fact of any plan of uniform action, is the variation amongst different insurance companies in their conception of the function of the insurance which they undertake. Some companies, construing their relations to the employer in a literal sense, make it a policy to pay only in case where the employer is strictly liable in law, and of defending doubtful cases as far as possible. Other companies adopt a broader view of their functions and recognize to some degree the natural desire of the employer on humanitarian grounds to see the workman compensated in doubtful cases. The latter conception involves of course an element of accident insurance, and as already noted, accident insurance, more or less limited, is frequently combined with policies of employers' liability insurance. The practice of companies, however, varies not only with the form of policy but with the general attitude towards employers' liability insurance. In some insurance companies the question of the merits of a claim for compensation is left almost wholly to the employer, the company promptly settling such claims as are recommended by the employer. In other companies every claim is carefully considered with the view to the possibility of a defence. Again, the attitude of employers towards insurance companies varies greatly. Some employers expect the insurance companies to stand behind them in every case, small or large; other employers carry their insurance only for the purpose of protecting themselves against very serious and large claims, and pay the smaller claims without having recourse to the insurance company. These variations in attitude on the part of the company and of the employer are necessarily reflected in the insurance rates, and constitute another factor standing in the way of anything like uniformity of hazard or rate, not only as amongst different companies but also as between different insurers in the same company.

In this connection it may also be observed that the rate of insurance usually varies with the amount of the policy. Rates are generally fixed with reference to policies for a limited sum, usually $5,000, which is fixed as the limit of the company's liability for any one accident. For insurance beyond this amount a higher rate is exacted.

Viewed as an agency for the administration of workmen's compensation the defects of employers' liability insurance become still more apparent. From this standpoint the efficiency of the insurance must be largely regarded as a matter of economy in transferring the money paid by the employer in premiums with a minimum of loss to its proper destination, the injured workman or his dependents. In this aspect employers' liability insurance appears in no better light than in the matter of rating. Figures gathered by the Commission of the State of New York show that of $23,523,585 gross premiums collected by ten firms during the years 1906, 1907 and 1908 only $8,559,795 was paid out in claims to injured workmen,[1] It is commonly estimated in the United States that of every dollar paid out by the employer in liability insurance premiums only from 20 to 30 per cent. eventually reach the pocket of the injured workman.[2]

The Report of the Superintendent of Insurance for the Dominion for the year 1911, shows that the twenty insurance companies engaged in the employers' liability

[1] See Rep. Ohio Com., Pt. I, p. 38.

[2] See S. & E., 242; F. & D., 16; Rep. Fed. Com. U.S., 840; Rep. Wash. Com., 5; Rep. Ill. Com., 11.

business in Canada collected a total of $2,103,275 in premiums, of which $1,033,096 was written off as "loss" and $927,774 was paid out in claims.[1] In other words, of the money paid in by way of insurance premiums, only 44 per cent. was actually paid out in compensation, and only 49 per cent. of loss is chargeable according to the calculations of the company against the year's business. Of this another considerable portion will go towards expenses and fees of the plaintiff's solicitor, leaving the ratio of actual benefit to the workman about the same as in the United States.

Of the expenses a very large percentage, between 20 and 25 per cent., represents the commissions of agents. Being a yearly business, liability insurance passes easily from one company to another and each change involves a commission to the agent for "new business." An effort on the part of the United States companies has resulted in a scaling down of this item of expense to 17½ per cent., but further reduction will be very difficult owing to the competitive nature of the business and the instability of policies due to constant changes in the laws. Another large item of expense is, of course, that of litigation. The balance is made up of general office expenses, salaries of officials, etc., though an increasing amount is being spent upon inspection of risks with a view to reducing the hazard. Owing to the diffusion of the business amongst a large number of companies, many of them small, and the consequent duplication of work, the ratio of expense is of course much larger than it would be if the business were in the hands of a smaller number of companies.

Notwithstanding the large percentage of premium money applied by companies in expenses the business of employers' liability insurance, as a business, has not been successful. Both the English and the American companies have since the inception of this type of insurance been running at an aggregate loss.[2] The returns of the British Board of Trade for 1910 shows that the thirty-four tariff companies in that country incurred an aggregate loss on the year's business of 4.77 per cent. of the premiums, while twenty-two non-tariff companies netted a loss of 34.28 per cent.

With the introduction of systems of periodical compensation new problems are being introduced into the business of employers' liability insurance. It becomes necessary, under these systems to calculate the present worth of the periodical payments, the probable duration of the life of the recipient or the period of incapacity. In England the practice has grown up of commuting the periodical payments by turning them into an annuity, and sometimes by purchasing a government annuity. The natural tendency is of course to liquidate the loss as soon as possible and write it off. Where the commutation assumes the form of a government annuity it doubtless affords some advantage in the way of assuring solvency. Where payment of the annuity is assumed by the company itself the question of reserves at once arises. In view of the uncertainty as to the duration of periodical payments consequent upon lack of experience and statistics, there is room for considerable difference of opinion as to the necessary amount of reserve and the inevitable danger of inadequacy is of course increased with the keenness of competition for business. There is grave reason to fear that the position of many of the English companies leaves much to be desired on the score of ability to meet their future obligations.[3] A movement is now on foot to bring these companies under closer government supervision.

But where the periodical payments are converted into a government annuity

[1] Abstract of Statements of Insurance Companies of Canada for the year 1911, pp. 57, 58.

[2] See F. & D., 23; S. & E., 237.

[3] See F. & D., 23.

further difficulties arise. A workman supposed to have been permanently incapacitated may partially or wholly recover his earning power, in which case his allowance is supposed to cease. The government annuity, however, would run on, unless, indeed a form of annuity were devised which should be subject to the contingencies of physical capacity, which would be the administrative side of the government accident insurance system. A corresponding difficulty would arise where the injury to a workman was after settlement of the annuity found to be more serious than supposed at the time of the settlement.

If any further argument is needed to show the difficulties of a system of liability insurance, it is furnished by a consideration of the highly anomalous and complex situations that may arise, for instance, in the case of a workman who has been totally or partially incapacitated for twenty years. His employer may be insolvent or dead. The insurance company may be insolvent. The employee's recourse is of course against the employer. If the employer is insolvent the employee cannot recover against him. The employer not having suffered any loss cannot recover against the company. If the employer is solvent and alive the company may be defunct and on the other hand if the company is in a position to carry out its obligations, the employer may not be alive or in a position to enforce them. The workman's claim is no stronger than the weakest link in the chain of liability and solvency, and the attempt to strengthen the position of the workman by a series of preferences and subrogations, merely adds to the complexity and the possibilities for litigation. In fact it cannot be too emphatically asserted that an employers' liability insurance system, unless under government control so rigid as to amount practically to government insurance, is entirely incompatible with a compensation system of periodical payments. From the employer's standpoint the danger of this condition of the liability insurance business is that his insurance may fail him just when he needs it most. A period of financial depression impairing the value of the insurance company's securities and curtailing its premium income may cause it to go into liquidation, leaving upon the employer not only his risk but under a periodical payment system the payment of compensation for which he has already paid the company.

Nor are the defects of employers' liability counterbalanced by any considerable accompanying advantages. Apart from amplitude of premium rates and success in contesting claims for compensation, the only factor which can have any considerable effect upon the profits of the insurance company and which affords any considerable field for its activities is that of accident prevention. In this branch the success of liability insurance companies has been no more marked, and their treatment no more scientific than in other departments.[1] While some effort has been made by inspection to select and grade risks these efforts have been thus far perfunctory and desultory. It is in fact very difficult for the average insurance company to work out any system of efficient inspection. In Canada, for instance, the insurance in each branch of industry is scattered amongst a score of companies. Many of the largest and best members of each class do not insure at all, and amongst the smaller employers non-insurance is the rule. Under these circumstances it is impossible for an insurance company to give to even the main branches of industries that specialized inspection which is necessary to secure adequate results. If the insurance were divided amongst the different companies on special lines according to the nature of the industry, there would be some possibility of specialized and scientific preventive work, but under existing conditions or under any system of voluntary insurance this is impracticable.

[1] See Rep. Ill. Com., 169.

The Actuarial Phase.

One of the most important of the many phases of the complex subject of workmen's compensation is the question of the proper actuarial basis for computing premium rates. This phase in itself is not so complex as it at first sight appears. It resolves itself into the question which of two plans shall be adopted; but the effects and consequences of the respective plans render the question one of the most direct concern in the establishment of a system.

In a system where a lump sum is paid at the time of the accident to liquidate the entire claim in respect of an injury, the actuarial problem presents a different aspect from that which appears where the payments assume a periodical form spread over a number of years. In the former case the actuarial problem is merely a matter of striking such rates as shall bring a total premium income sufficient to meet the year's claims, or the claims in respect of injuries occurring during the year. An inadequate rate would involve nothing worse than a loss on the year's business. The failure of an insurance company would not mean anything more than the loss of the insurance of one year.

Where, however, the compensation is payable in instalments spread over a period of years, terminable upon a variety of contingencies and subject to increase or decreases, different, or rather additional, considerations arise. It becomes necessary then to reckon with such factors as probable duration of life or of widowhood, probable number of dependents and probable extent and duration of disabilities. An error in the calculation of a rate under such a system is much more serious in its consequences than in a system where payments are regularly liquidated at the time of the accident. Inadequacy of rate under such a system involves insufficiency of reserves to meet future compensation payments; and the failure of an insurance company would mean not only the loss of a year's insurance but the loss of a series of pensions reaching forward a generation.

Where compensation insurance assumes the form of an insurance, in a private company, of the liability of the individual empolyer, there can be no question as to the necessity of maintaining adequate reserves to meet future payments. Any attempt to make up deficiencies in the reserves out of future premiums would bring the inevitable fate of similar practices in life insurance,—and the more readily as there is not the same difficulty in getting new employer's liability insurance as there is in getting new life insurance. The result would be bankruptcy for the company, but the more serious result would be the failure of the payments of compensation. But an entirely different set of circumstances arises where the compensation takes the form of an assumption by the state, or by a collective body exhaustive of its class, of the obligation to compensate directly the workman and not merely to indemnify the employer. In such a system there is in the first place no shifting or fluctuation of the class of insurers, except where an occasional business change occurs by reason of death, bankruptcy, etc. The class remains comparatively fixed. There is no danger of members leaving and joining another scheme, and consequently no danger of rates rising above normal even where no reserves are set up. It is possible, therefore, under such a system to assess merely the proper amount to meet each year's current payments without setting up any reserve to provide for future payments. If no attempt is made to set up a reserve fund there can never be any rate above the normal rate based upon the actual current requirement. Under such a plan, which may be called the "current cost" plan, the initial rate would be comparatively low, the first year's rate being based on the sum required to pay the first year's pensions. The annual rate would increase from year to year under normal

conditions, for a period of thirty or forty years, that is until such time as the number of persons dropping off the pension list by death or otherwise equalled the number coming on by reason of accidents.[1]

There are, therefore, available two plans of rating, one, which may be called the "capitalized" plan, of charging against the year's premiums a capital sum sufficient to provide for future payments of compensation for all accidents of the year, and the other, which may be called the "current cost" plan of merely levying each year the amount necessary to pay the year's pensions. Under the capitalized plan the rates are fixed upon the assumption that when an injury occurs an estimate should be made of the amount necessary to provide for all payments, immediate and future. The present worth, so to speak, of the compensation payments is found and this amount is collected and set aside in the year in which the injury occurs, or in the case of a private company, is written off as a loss against the year's premiums. Under the current cost plan no such estimate is made and no amount is set aside or written off. Each year there is collected only enough to meet the payments due that year.

For further illustration of the two methods reference may be had to the Washington Act under which, in case of death, an allowance of $20 per month is given to the widow or invalid widower. The compensation payments for one year would amount to $240. It is estimated that to supply the necessary fund to pay $240 per year for life in the average case $4,000 would have to be set aside. The question as between the current cost plan and the capitalized plan is whether there should be collected each year the $240 to be paid out that year, or whether the whole amount of $4,000 should be collected for the year in which the accident took place.

It is obvious that no such actuarial qustion would arise where the compensation was paid in a lump sum. In this country up to recent times and indeed in most countries the rule has been either a lump sum compensation or permission to commute the periodical payments for a lump sum. Accordingly insurance companies in this country and in other countries such as England have not been called upon to deal with any other actuarial plan than one involving immediate capital sums. The recent Act of the Province of Quebec, however, with its non-commutable "rents" has introduced a new phase in compensation insurance in this country. There can be no doubt that in the compensation systems of the future periodical payments will be the rule and lump sum payments will be abandoned.[2] This introduces an entirely new feature in insurance. It is necessary in fixing insurance rates on the capitalized plan to deal not only with questions of the hazard of different occupations and industries but such questions as the probable length of life, the probable age of workmen, the probability of being married, the probable number and age of children, and the probability of re-marriage of widows. Upon these will depend the amount and the period of the pension allowances, and the amount of reserve necessary to set up.[3]

Where compensation insurance is carried by private companies with a shifting clientele it is essential that the insurance rates shall be strictly adequate to provide a sufficient reserve for carrying the pensions, otherwise when the inevitable rise in rates was brought on the insurers would abandon their policies and the pension obligations would ruin the company. The tendency of the rise in rates would also be to attract the poorer class of business not wanted by better companies, which

[1] See Rep. Fed. Com. U.S., 103, 276; F. & D.
[2] See ante, p. 22.
[3] See ante, p. 59.

with its higher loss ratio would still further handicap the company.[1] The current cost plan of insurance is, therefore, possible only in a state insurance system or in a collective system with permanent classes.

The most obvious advantage of the current cost plan is the saving in immediate cost in insurance premiums. The immediate imposition of a capitalized rate would involve a very serious shock to many industries. It has been pointed out that the rate would run from 2 to 10 per cent. on the pay-roll according to the scale of benefits conferred by the Act. Under the current cost plan the rates would in most industries start at about one-fifth the capitalized rate.[2] Reference has been made to the want of adequate statistics and experience as a basis of rates.[3] In view of this it would be necessary, in order to insure adequacy in the reserve, to capitalize at an outside estimate, with the possibility, of course, that this would be much above actual cost, but with the possibility also that it might still be inadequate, in which case the whole intention would fail. Experience of other jurisdictions has shown the practical difficulty of assessing an adequate capitalization rate. In Norway the state insurance institution found itself after some years of operation face to face with a deficit of approximately $100,000 in its reserves. This amount was made up by the government out of the general funds.[4] It is easily seen that in a larger system such as that of Germany or Austria the deficit would have been much more serious. In fact the Austrian system which theoretically operates on the capitalized plan has been facing for some years a deficiency which in spite of constant advances in the rates is still increasing.[5]

There is a temptation to urge at first blush, against the current cost plan of compensation insurance, the objection against assessment life insurance, but a moment's reflection will show that the two classes of insurance are not on the same footing. In the first place in life insurance both the taking out of the policy and the continuation of the payments are voluntary. It is open to an insurer after he has made a number of payments to drop his policy, and, subject to the difficulty of increased age, to take out a new policy in another company. No corresponding course is open under a system of compulsory compensation insurance.

The only serious objection which can be urged against a system of current cost assessment is that it involves the throwing on future industry of some of the burdens accruing in the present. This objection is entirely outweighed by the consideration that the rate will not, when it reaches its maximum, be any larger than the capitalized rate, but as experience in Germany shows will be much lower, and the further consideration that the immense sums of money which it would be necessary to lay aside as a reserve fund are left in active circulation in the employer's business. But the theoretical objection itself vanishes when it is remembered that employers and the community generally are now bearing, and will continue for a generation to bear the burden of the accidents of the past. Those persons who have suffered injuries in past industrial accidents are of course being provided for, and will continue to be provided for by various means including poor relief and charity. As this burden gradually decreases it is just and equitable that the burden of the new compensation system should gradually increase.

One important phase of the capitalized plan of insurance, which is apt to escape notice on a casual consideration of the subject, is the aggregate size of the reserves

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[1] See Rep. Atlantic City Conf., 296.
[2] See Rep. Fed. Com. U.S., 102.
[3] See ante, p. 59.
[4] See 24th Rep. U.S. Bur. Lab., 2,032, 2,041; see also Bulletin 90, U.S. Bur. Lab., 798, 799.
[5] See F. & D., 130, 131; Bulletin 90, U.S. Bur. Lab., 753.

necessary in a capitalized system of state insurance. In any large system, these reserves would reach immense proportions. In the State of Washington the reserve investments for the first six months of operation were over $111,000. It is easily seen that even in that State with the natural increase in business and the extension of the system a very large fund will be built up.

In Germany, where the current cost plan was adopted from the beginning there is regularly assessed upon employers a margin of from 9 to 10 per cent. above the actual cost of the insurance, and this amount is being set aside as a reserve fund to provide for such contingencies as the entire wiping out of the industry or its inability to meet its payments in a period of financial depression. In the accident funds this reserve fund had in 1910, reached over $76,000,000. Strenuous objections are constantly being made on the part of employers against the piling up of this reserve. "On this subject the sentiment among employers is almost universal. They claim that even with its acknowledged faults this feature of their system is much superior to the methods used elsewhere in attempting to cover such deferred payments. They say that neither twenty-five years ago, when Germany started, nor now, are there statistics available upon which to base, with reasonable certainty, the future cost of accident compensation. They feel that it would be a most serious mistake to tie up the billions of dollars required to cover any reasonable estimate of deferred payments, and think that the withdrawal of such sums would do much more harm to German industrial development, which now needs all the available cash in the country, than any harm that can possibly come to future industries which necessarily will have to start under a heavier financial burden due to constantly increasing insurance premiums. They feel that such heavier burden is more than outweighed by the strenuous pioneer work which had to be done by the German industries at the beginning, and which must be done even now."[1] It is urged, also, in Germany that the maintenance of the reserve funds tends to extravagance and constant agitation. The existence of the funds is an invitation for greater and greater demands on the part of workmen, and a tendency on the part of the judges administering the law to allow claims not strictly justified. It may be argued that the money thus laid up in reserves is not lost, that it finds its way back into channels of commerce. This is in part true. But it is also true that funds so set aside have lost most of their fluidity and consequently much of their commercial efficacy.

The quotation above indicates also that even in Germany after many years of painstaking gathering of statistics, it is not possible to calculate accurately the capitalized cost of an injury. In a system just beginning such a calculation would be many times more difficult, and it has already been urged as one of the difficulties of employers' liability insurance that in the absence of statistics and experience it is impracticable to make even an approximate guess as to the capitalized value of periodical compensation allowances. One of the great advantages of the current cost actuarial plan is that the necessity for actuarial experience is entirely obviated.

The direct economic advantages of the current cost plan of compensation insurance are outweighed in importance, however, by the more direct effect of the plan in inducing preventive activity. The operation of the plan to this end as illustrated in the German system is discussed in a most interesting passage of the statement made before the Federal Commission by Mr. Miles M. Dawson.[2] It is there shown that the rapid rise in the insurance rate for the first few years is a marked factor in concentrating the attention of the employers upon the importance of accident

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[1] S. & E., 41.

[2] See Rep. Fed. Com. U.S., 102, 106, and see Interim Rep. Ont. Com., 403.

prevention. The tables on the following page will show the course of the premium rates in some industries in Germany.[1]

It should be observed that these rates unaffected by preventive activity, would under actuarial calculation have continued to advance for a period varying in different industries from twenty to fifty years. And this advance would be accelerated by the tendency to increase the speed of production and other modern factors tending to increase hazard. But the tables show that the rise in rates was very early interrupted and this was undoubtedly by reason of accident prevention. Thus in the agricultural implement machinery class, the rate, starting at 0.32 per cent. reached in seventeen years 2.07 per cent., and has since fluctuated very little, though in 1908 it reached 2.11 per cent. In the carpentry class the maximum of 2.80 per cent. was reached in eight years and since that time the rate has been materially lower. Railways, starting at .39 per cent., in seven years reached 1.80 per cent. and thereafter declined for some years, the present rate being about 1.85 per cent. A similar course is shown in most of the other classes. It is not difficult to see how the rapid increase in rates during the earlier period of the system would call increasing attention to the necessity of prevention, and the great success of the German system of accident prevention is largely ascribed to this factor. If there were nothing to commend the current cost plan of insurance except its influence in the direction of accident prevention, there would be in this aspect alone a sufficient warrant for its adoption and for the rejection of any plan of compensation incompatible with it.

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[1] Taken from brief of M. M. Dawson, Rep. Fed. Com. U.S., 277. See also Bulletin 90, U.S. Bur. Lab., 749.

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Agricultural Machinery Works	.32	.70	.82	.71	.80	1.12	1.32	1.19	1.21	1.23	1.14	.96	1.05	1.23	1.36	1.69	2.03	2.07	1.99	2.02	1.87	1.84	2.11
Beer Bottling and Shipping Concerns	1.73	1.83	2.81	1.52	1.66	1.62	2.09	1.64	1.66	1.60	1.60	1.19	1.28	1.34	1.37	1.53	1.80	1.77	1.73	1.71	1.70	1.77	1.89
Carpentry (general contract)	.49	1.10	1.39	1.33	1.45	1.56	1.90	2.46	2.80	3.07	2.80	2.42	2.29	2.00	1.91	2.42	2.47	2.37	2.29	2.18	2.03	2.14	2.32
Carpet Factories	.26	.42	.47	.44	.55	.57	.61	.60	.69	.60	.62	.60	.60	.66	.71	.94	.98	1.00	1.04	1.08	1.08	1.04	1.12
Carriage Factories	.32	.70	.83	.71	.80	.50	.59	.60	.61	.62	.57	.48	.52	.86	.95	1.19	1.42	1.45	1.20	1.21	1.12	1.11	.84
Dyeing Establishments (power)	.39	.64	.70	.67	.64	.66	.71	.70	.81	.70	.73	.70	.70	.77	.83	1.10	1.14	1.17	1.27	1.32	1.31	1.28	1.36
Flour Mills (steam power)	1.20	1.22	1.51	1.61	1.75	1.74	1.86	1.95	2.07	2.25	2.29	2.20	2.23	2.31	2.54	3.14	3.31	3.48	3.53	3.57	3.64	3.43	3.66
Furniture Factories (wood)	1.13	1.30	.77	.75	.82	.90	1.02	1.84	1.99	2.03	1.95	1.69	1.50	1.51	1.72	1.96	2.14	2.07	1.95	2.00	1.91	1.89	1.93
Metal Pressing, Stamping, etc.	.35	.46	.53	.47	.46	.52	.58	.55	.52	.50	.47	.44	.44	.38	.41	.53	.64	.66	.77	.80	.82	.83	.88
Paint Factories (color factories)	.37	.94	1.22	1.28	1.32	1.39	1.45	1.47	1.38	1.39	1.30	1.28	1.20	1.13	1.16	1.45	1.58	1.61	1.71	1.72	1.68	1.62	1.70
Paperhanging	.39	.88	.93	.89	.97	1.04	1.27	.41	.47	.51	.47	.40	.38	.40	.38	.48	.49	.47	.46	.44	.41	.43	.48
Powder Factories (black)	.75	1.88	2.44	2.57	2.64	2.78	2.90	2.93	3.84	3.87	3.61	3.27	3.06	3.11	3.20	4.00	4.34	4.44	4.05	4.09	4.00	3.84	4.04
Railways (steam)	.39	.79	1.26	1.38	1.49	1.52	1.68	1.80	1.72	1.56	1.43	1.26	1.30	1.34	1.42	1.63	1.81	1.89	1.83	1.84	1.82	1.76	1.82
Saw Mills	1.59	1.82	2.79	2.70	2.97	3.23	3.68	3.06	3.31	3.38	3.26	2.82	3.01	3.02	3.44	3.92	4.28	4.32	4.07	4.19	3.99	3.95	4.19
Sewing Machine Factories	.44	.33	.45	.41	.33	.36	.41	.46	.52	.45	.41	.39	.24	.26	.27	.33	.38	40	.39	.39	.37	.33	.35
Shipbuilding Plants	.47	1.05	1.24	1.06	1.19	1.12	1.32	1.49	1.52	1.54	1.42	1.20	1.31	1.60	1.77	2.20	2.64	2.69	2.59	2.63	2.43	2.40	2.74

RECOMMENDATIONS.

Nature of System.

The one outstanding and inevitable result of the analysis of principles and comparison of systems in the foregoing pages, is the negative conclusion that no system of individual employers' liability, however broadly that liability may be extended, will afford a solution, permanently or even temporarily satisfactory, for the problem of workmen's compensation. Only two other alternatives are open—either a collective liability or a state liability system. It has been pointed out that these systems are not essentially dissimilar, the differences being theoretical rather than practical. It is submitted that the system most likely to be satisfactory, under all the circumstances, for the Province of Ontario is a collective system under state administration and control. It is proposed that the funds for compensation should be collected by grouping the various industries and occupations of the province, and assessing upon each group its proper insurance premium. As an illustration, the wood-working industries of the province should be placed in one group and should bear the cost of all injuries occurring in connection with that industry. It would not be necessary or advisable that all employers in wood-working industries should bear the same rate of insurance, but such variations as were found from experience or otherwise to be necessary or advisable should be made by way of sub-classification.

Administrative Body.

It is submitted that the system of compensation should be administered by a Government Commission, a form of administration well understood in this country and well adapted for dealing with a subject involving so many complex and technical considerations. It is suggested that the Commission be called the Industrial Insurance Commission or Board, and that it consist of three Commissioners appointed by the Government. The Commission should be, as far as possible, removed from the influence of party politics. Neither in the adjudication of claims nor in the fixing of rates of insurance should the Commission be under the direct control of, or directly responsible to, the Government on its judicial side. The Commission should be as independent of the executive as judicial bodies usually are in this and other Anglo-Saxon countries, and the business side of the system should be conducted upon strict business lines. It is urged that in personnel, salary and otherwise the Commission should rank at least with the High Court judgeship.

Powers of Commission.

The working out of the details of the system should, it is submitted, be left as largely as possible to the Commission, the act defining clearly the scope of its powers and the scale of compensation, and generally outlining the procedure and operation.

Methods of Collecting Funds.

As to the method of collecting funds it is submitted that this could be done either through the banks or through the agency of the municipal officials or through both. Forms could be sent out to employers upon which to report as to the amount or estimated amount of the pay-roll. In case of default in reporting and in the case of all smaller employers, the municipal assessor might be required to make the necessary report. All employers within the scope of the system might be required

to report directly to the Department, with appropriate penalties if it were left over for the assessor. The Commissioners should have a certain number of auditors for the purpose of auditing the pay-rolls of employers and checking over the reports of assessors.

Actuarial Method.

It is submitted, as already indicated, that the insurance rates should be based upon the current cost plan as distinguished from the capitalized plan. In other words it is proposed that the annual assessments upon employers shall represent only the cost of the current year's compensation payments with merely a small margin for an emergency reserve fund. This is an essential feature of the proposition embodied in the brief, and any other plan would be unacceptable to the employers represented herein.

It is believed that there may be instances where it would be advisable to collect the full estimated capital fee. An example would be the case of a foreign contractor, temporarily engaged in building operations in the province. But the general rule should be the assessment of the current year's requirements for compensation outlay.

It is submitted that it might be wise to place the fund for each class of industry at an early stage, on a footing which would render it unnecessary to assess premiums in advance. The rates in each class could be made high enough for the first few years to provide a reserve sufficient to tide over one year. The assessments could then be made at the end of the year and the double work incidental to assessments on estimates and their readjustment would be obviated.

It is submitted that it would be inconvenient to include the schedule of rates in the statute establishing the system. The schedule will be a subject for technical actuarial treatment in the first instance, and merely a matter of adjusting and collecting the amount required for the year.

The grouping of industries for assessment purposes is a matter also for expert actuarial treatment, but it has also practical phases which might make it advisable to provide a preliminary classification in the Act itself. But the commission should have power to combine and sub-classify as experience may demand.

Control of Rates.

Subject to some provision insuring that the rates of insurance shall in general be based on the current cost plan, the rates should be entirely under the control of the Commission. Facilities should be afforded, however, for the hearing of applications, complaints, and representations on behalf of individual employers or associations representing groups of employers with respect to rates, classifications and other matters connected with the administration of the system.

Adjustment of Claims.

Claims for compensation should be adjusted by the Commission. It might be found possible eventually to delegate the adjustment of ordinary claims to subordinate adjusters; or to adjust claims *pro forma* upon the report of a secretary or other subordinate official, who would examine the application and report to the commission thereon. But in the formative stages of the system when precedents and policies are being established it is submitted that every claim should come before the Commission itself for decision.

As already suggested the Commission could adjust claims in most cases upon duly verified reports from the injured workman or his representative, from the employer or his foreman or superintendent and from the attending physician. If any dispute of fact were disclosed by these reports evidence could be taken by the Commission, or a special officer could be sent to investigate and report upon the case.

Appeals.

In adjudicating upon claims the decision of the Commission should, it is submitted, be final upon questions of fact. It is suggested that an appeal might lie in questions of law (which would be rare) to the Court of Appeal for Ontario. It is further suggested that for the purpose of deciding upon such questions of law there should be facilities for the submission of stated cases by the Commission itself and that appeals should, where possible, be brought in this form.

Method of paying compensation.

As to the payment of periodical compensation allowances it is submitted that this could be effected through the agency of the banks. Warrants could be sent out to those entitled to compensation, payable upon presentation to any bank. It would be very convenient, if it were possible to make an arrangement with the Dominion Government, to utilize the Post Office for the payment of compensation claims. If the banks were used as above suggested the funds of the Department might be apportioned amongst the various banks in deposits proportionate to the service rendered.

Employers' Associations.

The difference between such a system as that here recommended and the German system is that the collection of premiums and the adjudication of claims, which in Germany are functions primarily exercised by the employers' associations, would under the proposed system be assumed by the state. The balance of the functions of the German employers' associations could, and doubtless would, be assumed by associations voluntarily formed and corresponding generally to the groups into which employers were divided for assessment purposes. The state having assumed the functions of collection and disbursement of funds, the formation of the associations would not be a vital necessity and the compensation system would operate notwithstanding the absence of the associations; but there can be no doubt that there would be strong inducements upon employers to organize for the purpose of co-operative effort in preventing accidents and otherwise promoting efficiency and economy in the administration of the system. It is submitted that the Act should afford practical facilities for the organization of such voluntary associations and for their participation in the operation of the system.

Provision might be made for the approval by the Commission of the constitution of such associations and their official recognition. Such associations might be given power, under the supervision of the Commission, to engage experts in accident prevention payable out of the accident insurance funds. They might also be given the power to make and enforce rules approved by the Commission for the prevention of accidents, and to act in other ways calculated to promote the success of the system.

First Aid Funds.

It is submitted that the benefit societies which are now in operation in many industries should be, as far as possible, preserved. In order to secure a suitable scope for these societies and in order to provide facilities for prompt medical and hospital attention, and generally for the co-operation of employees with employers in promoting safety, a separate fund should be established to cover the first few weeks. Out of this fund should be paid medical and hospital expenses and compensation for the earlier weeks after an injury. The suggestion is made that this period should cover, as in Germany and in most other countries, the first thirteen weeks.

It is submitted that the premiums for the first aid fund should be collected in the same way and at the same time as the premiums for the larger fund. But it is suggested that after being collected the money might be handed over for administration to local benefit societies working under constitutions approved by the Commission. Where such benefit societies did not exist the money could be handled by the central department.

Of the premiums for the first aid fund it is submitted that workmen should pay a substantial proportion, and that each workman's portion should be deducted monthly or quarterly from his wages.

F. W. WEGENAST.
Solicitor, Canadian Manufacturers Association.

Appendices

APPENDIX I.

COMPARISON OF UNITED STATES AND GERMAN STATISTICS.[1]

No.	Occupations.	Population.	
		Germany. 1907.	United States. 1900.
1	Agriculture, Horticulture, Stock Raising, Forestry, etc..	9,883,257	10,381 765
2	Industry.....	11,256,254	7,085,309
3	Trade and Transportation.....	3,477,626	4,799,164
4	Domestic and Personal Service.....	471,695	5,589,657
5	Professional and Public Service.....	1,738,530	1,258,538
	Totals.....	26,827,362	29,073,233

Public Officials and Soldiers in the United States are covered under No. 4, in Germany under No. 5.

APPENDIX II.

STATISTICAL EXPERIENCE OF WORKINGMEN UNDER THE OPERATION OF COMPULSORY STATE INSURANCE IN GERMANY.[2]

In 1887 there were insured against sickness and accidents in Germany 3,861,560 workingmen among 319,453 establishments,[3] and the number of notices of accidents was 106,101. A special analysis of the different elements of the causes of these accidents will be found below:

In 1907, insured in Germany against accidents;[4]

	Persons Injured.
Industrial, building, and marine trade associations (Associations, 66; establishments, 637,118)	9,018,367
Agriculture and forestry trade associations (Associations, 48; establishments, 4,710,401)	11,189,071
State executive boards (boards, 535)	964,589
	21,172,027

In 1897 there were insured in Germany against accidents in the same associations and 409 State executive boards, in round numbers 18,500,000.

[1] S. & E., 25.
[2] Fourth Special Report of the Commission of Labor, 1893. Compensation, p. 73.
[3] Four Special Report of the Commission of Labor, 1893.
[4] F. & D., 101.

APPENDIX III.

EXCERPTS FROM ARTICLE ON "THE ROAD TO SOCIAL EFFICIENCY," BY LOUIS A. BRANDEIS, IN NEW YORK OUTLOOK, JUNE 10TH, 1911. SHOWING POSSIBILITIES IN THE FIELD OF ACCIDENT PREVENTION.

Possibilities of lengthening lives and of avoiding sickness and invalidity, like the possibilities of preventing accidents, will be availed of *when business as well as humanity demands that this be done.*

William Hard quoted Edward T. Davies, the Factory Inspector of Illinois, as saying that in the year 1906 one hundred men were killed or crippled in the factories of Illinois by the set-screw, and that for thirty-five cents in each instance this danger device could have been recast into a safety device. The set-screw stands up from the surface of the rapidly revolving shaft, and as it turns catches dangerously hands and clothes. For thirty-five cents the projecting top of the set-screw could be sunk flush with the rest of the whirling surface of the shaft, and then no sleeve could be entangled by it, and no human body could be swung and thrown by it.

The South Metropolitan Gas Company, which established, in connection with its system of compensation for accidents, a system of inquiry into all accidents with a view to their prevention, reduced the number of accidents per thousand in seven years from sixty-nine to forty.

Jack Calder, of Ilion, New York, tells of the reduction of accidents in an American plant of a yearly average of two hundred to sixty-four.

Can there be any doubt that if every accident had to be investigated carefully and adequately compensated for, the number of accidents would be reduced to a half or a third.

The social and industrial engineers will find much of inspiration and encouragement in the achievement of their fellow-engineers of the factory mutual fire insurance companies of New England.

The huge fire waste in America is a matter of common knowledge. The loss in 1910 was estimated at $234,000,000; and yet there is one class of property, in its nature peculiarly subject to fire risks, which was practically immune. Some 2,600 factories and their contents valued together at about $2,220,000,000 and scattered throughout twenty-four States and the Dominion of Canada, suffered in the aggregate fire losses of about one-fortieth of one per cent. of the value insured. The factories so immune were those owned by members of the so-called "factory mutuals" of New England. The cost of these factories for fire insurance and fire prevention in the year 1910 was only forty-three cents for each one thousand dollars of property insurance. Half a century before the cost of insurance to the New England factories was $4.30, or ten times as great. The record of the "factory mutuals" of Rhode Island and of some other States is similar.

Now, how has this reduction of fire insurance cost been accomplished? It was done by recognizing that the purpose of these so-called fire insurance companies is not to pay losses but to prevent fires. These mutual companies might more appropriately have been called Fire Prevention Companies; for the losses paid represent merely instances of failure in their main purpose. In these corporations the important officials are not the financiers but the engineers—men who rank among the leaders in the engineering profession of America—and aiding them is a most efficient corps of inspectors.

The achievement of these factory mutuals—the elimination of ninety per cent. of the risks—is the result of sixty years of unremitting effort in ascertaining and

removing causes of fires and incidentally educating factory-owners and their employees in the importance of providing against these causes. The premiums paid represent the cost of this advice, inspection and education as much as the cost of what is ordinarily termed insurance.

The progress of the factory mutuals in reducing fire losses was relatively slow, but it has been steady, as is shown in the following table of net cost of fire insurance per $1,000 per year in two representative companies:

Years.	Boston Manufacturers Mutual Fire Insurance Company.	Arkwright Mutual Fire Insurance Company.
1850–60	$4 37	.....
1861–70	2 79	$3 37
1871–80	2 54	3 00
1881–90	2 27	2 16
1891–1900	1 44	1 54
1901–1910	0 68	0 69
Year 1910	0 44	0 43

Possibilities no less alluring are open to the social and industrial engineer. Will the community support their efforts?

APPENDIX IV.[1]

ANALYSIS OF DRAFT BILL OF STATE OF WASHINGTON.

By Harold Preston, Solicitor for Investigating Commission and Draftsman of the Act.

The proposed Washington Act abrogates the doctrine of negligence as between employer and workman; removes the subject from the domain of private controversy; asserts and assumes the subject to be within the police power of the state; and deprives the courts of jurisdiction in the premises, except in the administration of the act. There are certain exceptions: (1) Where the injury was caused by the intent of the employer to produce it; (2) Where the injury is caused by the intent of the workman to produce it; and (3) Where the employer upon demand refuses to contribute to the fund for the creation of which provision is made in the act. In the case of (1) the workman takes under the act and may sue the employer for any excess of damage over the amount received under the act. In the case of (2) the workman receives nothing under the act; and in the case of (3) the employer is suable at law, the defences of fellow workman and assumption of risk abolished and the doctrine of comparative negligence established.

The act applies only to occupations defined in the act as "extra hazardous." There are two funds provided for by the act: the first-aid fund, and the accident fund. The first aid fund is created by the monthly payment into the state treasury by each employer of four cents per day for each day's work done for him during the preceding month. Of this he deducts two cents from the wages of the workmen. Out of this fund all injured workmen receive the necessary medical, surgical and hospital attendance so long as required, and also for the first three weeks of incapacity $5.00 per week. The accident fund is created by the payment into the

[1]*Note.*—Appendices IV., V., VI., VII., VIII., IX., X., XI. are published as illustrating in concrete various phases of the operation of the Act of the State of Washington, which is the nearest approach, in any existing system, to the system advocated in this brief.

state treasury by such employer of a certain percentage of his annual pay-roll, the percentage varying with the degree of hazard inherent in the occupation. It is paid annually in advance, calculated upon the past year's pay-roll; if there is none such, upon an estimated pay-roll. The department may permit the payment to be made in quarterly instalments. At the end of the year an adjustment is to be made. Undue carelessness upon the part of any employer may result in the increase (for future application) of his rate of contribution. At the end of each year an accounting is had with each class of industries, and if it proves to have paid in too much the excess is refunded; but, on the other hand, it too little, the deficiency is made good upon the same basis as the original contribution.

Out of the accident fund cases of death or incapacity over three weeks are cared for. Permanent partial injuries are compensated in lump sum payments, $1,500 being the maximum amount, and the loss of a major arm at or above the elbow, the maximum injury. Lesser permanent partial injuries are compensated in proportion. All other cases are compensated in monthly payments. These may be converted, in whole, or in part, into lump sum payments in the discretion of the department, the previous application of the beneficiary being necessary, except where the beneficiary removes from the state. The amount of lump sum payments may be settled by agreement between the beneficiary and the department within a certain limitation, to-wit: that a payment of $20 per month to a person 30 years of age is worth $4,000, each settlement being based upon the expectancy of life under the American Mortality Tables. The monthly compensation is all at flat amounts. The earning power is not taken into consideration (except in one case hereinafter referred to). In death cases funeral expenses not to exceed $75 are paid. If the decedent was unmarried and had no dependent, no further payment is made. A dependent is a relative (among an enumerated list) who was receiving actual pecuniary assistance from the decedent, prior to his death (he having been unmarried at the time of his death). Such a dependent receives monthly one-half of one-twelfth of the amount of pecuniary assistance actually rendered the dependent by the decedent during the year preceding the accident. If the decedent left a widow she receives $20 a month as long as she shall live unmarried. Upon remarriage she receives twelve monthly payments and no more. The widow receives $5 extra per month for each child, not to exceed $15 per month. If orphan children survive they receive $10 per month each, not to exceed $35 for all of them. Payments to or on account of a child cease when the child becomes 16 years of age. If the workman survives the acident and is permanently totally incapacitated he receives, if unmarried, $20 per month so long as the total incapacity continues. If married, he receives $5 per month extra and $5 per month extra for each child, the total not to exceed $35 per month (and the payment on account of any child ceasing at the sixteenth birthday). If the incapacity is only temporary, the same monthly payments are made increased for the first six months 50 per cent., provided that the increase shall not operate to make the monthly payment exceed 60 per cent. of the monthly wage. As long as the injured workman is able to make earnings in any way the monthly payment is scaled down accordingly.

If the accident is brought about because of the absence of any safeguard or protective device required by statute or ordinance or by public regulation under any statute, the employer is required to pay into the fund 50 per cent. of the payment made out of the fund on account of the injury, if he is responsible for the absence of the safeguard. Whereas, if the workman is responsible for its absence, his compensation is reduced 10 per cent.

A State Department is created to administer the act, composed of three com-

missioners appointed by the Governor. The legislature appropriated $150,000 out of the general fund to pay the operating expenses of the department until the next legislative session. Except as to a few matters left discretionary with the department, appeal lies to the courts from the decision of the department at the instance of any person feeling aggrieved, such appeal to be only upon questions of fact or proper construction of the act. The proceeding is informal and summary; jury trials being provided only in cases arising under the penalizing provisions of the act. If the department ruling is reversed or modified the proper fund must bear the expense of the litigation, including the attorney's fee to be fixed by the court.

The intent is declared that the fund shall be no more and no less than self supporting. Every dollar paid in by employers must go to injured workmen, except in case the expense appropriation should run out between sessions, in which case the deficit is made good, 85 per cent., out of the first aid fund and 15 per cent. out of the accident fund. The State Treasurer is required to keep the funds invested at interest in the class of securities provided by law for the investment of the permanent school fund, and any uninvested funds to be kept on deposit at interest on daily balances in such banks as have been approved by the State Board of Finance.

In order that each year may provide for its own expenses the State Treasurer is required, as soon as the liability of the fund is determined in any individual case, to segregate from the fund the amount necessary (subject to the $4,000 maximum) to take care of that case and keep it invested, as above stated, being privileged to borrow from the general fund for that case moneys necessary to meet monthly payments, pending a conversion into cash of a security belonging to the case.

APPENDIX V.

December 27, 1911.

F. W. WEGENAST, ESQ.,
General Counsel, Canadian Manufacturers Association, Toronto, Canada.

DEAR SIR: Your favour of the 21st instant received. I have read with much interest the report of your Special Committee, with the preparation of which I have no doubt you personally took considerable part. I think the report is splendid and hope it will have good results in connection with the framing of your proposed legislation.

There are two points in it where I am in disagreement. The first is in speaking of the Washington plan as a plan of state insurance. I think it would be more correctly described as a system of collective liability administered by the State. At the same time, your recommendation of the State being back of the fund is a good one. In some of the earlier drafts of the bill I had it provided that if an injured workman found a deficit in the fund applicable to his case, the State should make it good out of its general fund and then recoup itself later out of the industry involved. We have the constitutional provision forbidding the State to loan its credit to any other than a public use, and we had decisions in other States passing upon like constitutional provisions which rendered the provision, as I had it so incorporated, of doubtful constitutionality. The line of argument pursued by these decisions referred to was that the contribution of the state was not confined to cases of pauperism; in other words, the injured workman might have money in the bank and

other property and still receive the same aid as the indigent injured workman. You have no such constitutional clause to contend with and, therefore, you are in a position to improve upon our work in that respect.

The other point is the non-provision by the present for the liabilities of the present, although I acknowledge that your plan has much in its favour because it is the first step to be taken. The first step being so taken, in the course of a few years statistics will be gathered, the plan better understood, and it might then become possible and advisable to make the present care for its own cases.

Yours truly,
HAROLD PRESTON.

APPENDIX VI.

EXTRACT FROM THE NEW YORK JOURNAL OF COMMERCE, NOVEMBER 11TH, 1911, PER.

BAD LIABILITY LOSS.

IN STATE OF WASHINGTON UNDER THE NEW LAW.

The news comes from Seattle, Wash. that George A. Lee, Chairman of the Industrial Insurance Commission, has announced that the claims for the death of eight girls in the powder mill horror at Chehalis, Wash.,must under the law be paid by assessments levied on the powder manufacturers of the State. There are only three concerns engaged in this industry and it is likely that the assessments will be heavy. At present there is about $270 in this branch of the insurance fund to pay the claims. The maximum which can be allowed the claimants is $32,000, or $4,000 for each death, but it is the opinion of the Attorney-General that the law does not require the payment of $4,000 for the death of a minor.

Just exactly what is the economic value of a minor is a question which the Attorney-General and the Industrial Insurance Commission will be called upon to decide shortly. The section of the Workmen's Compensation Act which will likely apply to the Chehalis case is as follows:

"If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents shall receive $20 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years."

Whether sub-section (*e*) of Section 5 applies to minors is a point which must be passed upon by the Attorney-General. The question has never been raised before the Commission. The division referred to reads as follows:

"For every case of injury resulting in death or permanent total disability, it shall be the duty of the department to forthwith notify the State Treasurer, and he shall set apart, out of the accident fund, a sum of money for the case, to be known as the estimated lump sum value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of $20 to a person thirty years of age is equal to a lump-sum payment, according to the expectancy of life, as fixed by the American mortality table, of $4,000, but the total is in no case to exceed the sum of $4,000."

In no case will any other industry in the state but the powder mills be affected by the Chehalis tragedy. The law makes no provision for borrowing from any

other branch of the accident fund. The powder mills must bear the burden of the accidents in their own class without reference to any other industry. In the event that the Commission allows the claim on the basis that the parents or dependents of the girls shall receive $20 a month until such a time as they would have arrived at the age of twenty-one years, the total expense of the claims will be approximately as follows:

Vera Mulford, aged 14	$1,680
Bertha Crowne, aged 16	1,200
Tillie Rosbach, aged 18	720
Sadie Westfall, aged 16	1,200
Eva Gilmore, aged 17	960
Bertha Nagle, aged 17	960
Ethel Tharp, aged 20	200
Mrs. Ethel Henry (who leaves seven-month-old baby)	3,700
Total	$10,660

The $270 in the powder company fund was paid in by the Imperial Company and the Puget Sound Alaska Company, on the basis of ten per cent. of the pay-roll.

The DuPont Company has not paid in its first assessment. It objected to being assessed at the same rate as the other companies, and wanted a lower rate. Commissioner C. A. Pratt and J. H. Wallace inspected the plant, and say that the company has done everything possible to protect its workers, but the law fixes the schedule of rates. However, the law fixes the minimum and now the Imperial Company may be assessed a higher rate than any other company. It will probably be some time before the matter is straightened out by the officials. The law has been held constitutional by the Supreme Court, but its various sections have not been interpreted up to this time. The point as to whether $4,000 has to be set aside for the death of each minor is the most important of these raised up to the present time.

APPENDIX VII.

OLYMPIA, WASH., Dec. 20th, 1911

F. W. WEGENAST, ESQ.,
General Counsel, Canadian Manufacturers' Association, Toronto, Ont.

Your communication of recent date to hand. We were very much surprised indeed to observe the statement made by .....; it is an absolute mis-statement of the facts. Attached hereto you will find a tabulation of the payments into, and disbursements out of the 47 funds listed in our law, and No. 48, which is the "Non-hazardous elective." You will observe that we have taken in nearly $400,000.00 and paid out to date less than $14,000.00.

The only important fact which the powder class, No. 46 teaches is the undesirability of small classes. It does not give sufficient opportunity for distribution of risk. In our State, the situation is aggravated in this one small class by the fact that the big DuPont Powder Company have so far refused to pay, proposing to contest the constitutionality of our law in the Federal Courts.

I attach hereto a communication issued by the State Federation of Labour which is eloquent of the appreciation of this State.

Our objection in Washington to the English Act and the New York Act are discussed in that paper. They are principally:

1. Dependants cast off on to charity after a brief term of years.
2. The slow and costly court machinery retained.
3. Economic waste in payment of unnecessary lawyers and casualty companies.
4. Employers' funds drained out of the State.
5. State activity and public education for accident prevention not emphasized.
6. Rates governed by competition and conditions in other states rather than our own.
7. Statistical work by the state important to public welfare not performed.

With due seasonal greetings, I am

Very cordially yours,

The Industrial Insurance Commission.

By HAMILTON HIGDAY,

Commissioner.

APPENDIX VIII.

COPY OF CIRCULAR.

WASHINGTON STATE FEDERATION OF LABOUR.

To the Trade Unions of the State, Greeting:

The Workmen's Compensation Act which became effective October first, is daily demonstrating its value to the injured workmen. Under its provisions many victims of industrial accidents are receiving compensation, who, under the old system, would have become a burden upon friends or subjects of charity. Two months of experience has, however, demonstrated the necessity of every organization, whether labour, fraternal, or social, that has the welfare of its membership at heart, participating more actively in the securing of prompt attention in behalf of its membership.

Employers who have hitherto felt called upon to guard against the possibility of recovery of damages are slow to awake to a realization of the changes effected by the new law.

Casualty Companies that have derived immense profits under past conditions, are opponents of a system that takes away their source of revenue. Ambulance-chasing lawyers, who have lived off damage suits, which they were able to promote under the old liability system, are joining hands with agents of Casualty companies and opposing employers in an endeavour to discredit the new law.

It is the duty of our organizations to rally to its support, and gain for our membership full and prompt returns for injured workmen. To that end each organization should instruct its officers or the proper committees:

First: To secure from the Industrial Insurance Commission, Olympia, Wn. copies of the law and necessary blanks to be filled out in case of injuries to employees received in the course of their employment.

Second: To thoroughly familiarize themselves with the law.

Third: To look after injured members, or in case of death, their heirs, and see that necessary blanks are promptly filled out and forwarded to the Commission.

Fourth: To report to your organization and the State Federation of Labour any defects found in the law, its operation, enforcement, and other difficulty encountered to the end that we may look to a future adjustment of same.

Bear in mind that every injury should be reported whether serious or not; that all injured workmen in hazardous employments are entitled to compensation from the day of injury. Aid them in getting it, and you will not only aid the needy but lessen the drain upon your local treasuries.

For your convenience we enclose card properly addressed upon which you can designate your needs as to copies of law and blank forms which should be kept on file by the organization in order to make prompt reports.

Trusting that you will co-operate fully with us in making a success of this important legislation, we remain.

Yours fraternally,

CHARLES PERRY TAYLOR,
Secy-Treas.

CHAS. R. CASE,
President.

APPENDIX IX.

OLYMPIA, WASH., Dec. 20th, 1911.

The Governor,
Lansing, Michigan.

My dear Sir:

The attention of this Commission has been called to a report to the effect that one of the members of your Compensation Commission "has just returned from Washington and found there a most lamentable condition of affairs. The liabilities already accrued against the State exceed by an enormous amount the amount of money on hand. There was an explosion there where I understand nine lives were lost, making an aggregate liability of $27,000, and there was only $177.00 in the State treasury. Then, too, the State is being deluged with all sorts of petty claims; every man who has a finger hurt seems to think the State treasurer must recompense him."

This Commission has no interest in the particular system of legislation your Commission approves, but it is unfair to this State and to Michigan that such an absolute misrepresentation of the true facts stand uncorrected.

The compulsory State Insurance fund now amounts to about $400,000.00 contributed by approximately 5,000 establishments grouped by the law into 47 classes of "compulsory associations" according to similar trades and hazards. Out of this fund there has been disbursed to date less than $15,000.00. That the law and the policy and practices of this commission are approved by the beneficiaries is best evidenced by a circular letter issued to all locals by the Washington State Federation of Labor urging the closest co-operation on all working people.

The sole basis for the untrue statement above quoted is that our class 46, Powder Works, embraces only four establishments in this State, all small except that of the DuPont Company commonly known as the Powder Trust. The small plants contributed to the accident fund, the large plant proposes to test in the

Federal Courts the constitutionality of our law which was unanimously sustained by our State Supreme Court, Sept. 27th, 1911. An explosion in one of the small plants resulted in the loss of eight young girls who had been permitted to work in the same room in close proximity to large stores of powder. The fund is sufficient for the payment of the pension provided by law to the parents of these girls for a considerable period, but until the very large powder company contributes its quota, the setting aside of the reserve to the parents of those children required by law must be deferred.

Respecting the filing of numerous trivial reports, that statement is correct since our law requires the employer to report "any accident," and with the beginning of its operation, October 1st, the employers were endeavouring to comply heartily in every detail. However, notwithstanding the unfortunate fact that there is no "first aid fund" (same having been stricken out in the legislature), the Commission does not compensate for any injury unless actually compelling the workingman to abandon his job for a period which results in the loss of more than 5 per cent. of his monthly wage.

The employers of the State are almost unanimously in hearty accord with this law and its present administration. They have learned that while the rates fixed by the legislature are unquestionably higher than casualty companies have insured them for heretofore, yet those rates were contributed only a three months' payroll, and no more payments are to be made to any of the 47 funds except such fund be first reasonably drained by the accidents of that class; in other words, they are assessed on the pay-rolls at the rate named only occasionally as necessary.

Furthermore, they appreciate that while casualty companies insured them against legal liability which applied to about fifteen per cent. of the accidents, this law compensates the workmen in about 100 per cent. of work accidents without regard to fault. In the face of this, we believe it will be demonstrated that the actual rates which can only be determined after a year or two, will in fact, be less than their outlay heretofore, without considering their loss of time and incidental expenses incident to the litigation system.

Yours respectfully,

THE INDUSTRIAL INSURANCE COMMISSION, PER.

APPENDIX X.

LETTER FROM LARSON LUMBER CO.

SEATTLE, WASH., Nov. 17th, 1911.

MR. R. H. H. ALEXANDER,

Secretary, British Columbia Branch Canadian Manufacturers Association.
441 Seymour Street, Vancouver, B.C.

Dear Sir,

In response to yours of Nov. 13th, I desire to say that the workings of the Workmen's Compensation Act in this State during the six weeks of its trial so far have been eminently satisfactory. Of course, this is altogether too short a

time to form a comprehensive conclusion. From the viewpoint of the employer, however, I have preferred to carry my individual risk in the past. Our company did not carry liability insurance for some time, but we set aside one per cent. of the pay rolls to cover sums paid to injured workmen. We endeavoured to pay all employees some compensation, whether we were liable or not and I have found in the course of several years' experience, that one per cent. of the pay rolls covering the mills and camps was sufficient to pay ordinary losses. There is a feature of extraordinary losses staring one in the face, however. The compensation Act protects the individual against any extraordinary heavy loss such as might arise from the bursting of a boiler for example.

On account of my previous experience, as outlined above, I was somewhat opposed to the State's Compensation Act, as their charge contemplated a cost of two and one-half per cent. on the payroll. However, we were able to get an amendment, which made the two and a half per cent. an advance and made the subsequent assessment cover only actual losses paid.

Answering Mr. Wegenast's question as to whether the system is preferable from an employer's standpoint to the common law system of the alternate of the individual liability; I am inclined to the belief that it is vastly superior to the old common law, especially as it has been practised in the Western States, and I believe on account of the liability of extra hazard it is preferable to the individual liability of employers. Of course, as I said, all is in the nature of an experiment, being somewhat more advanced and socialistic than any other in existence. I opposed it in the beginning as stated above, but am now convinced that law can generally be administered to the satisfaction of employers and to the relief of employees, whereas before very little of the actual money paid reached the injured party.

I trust that this answers your questions. With personal regards, I remain,

Very truly yours,

J. W. Bloedel.

APPENDIX XI.

STATE OF WASHINGTON.

STATEMENT OF CONDITION OF ACCIDENT FUND AT CLOSE OF TWELVE MONTHS ENDING SEPTEMBER 30, 1912.

Occupation.	Months Called.	Class.	Total Amount Paid In.	Claims Paid.	Reserve on Approved Claims.	Balance in Fund.	Per Cent. Un-expended	Rates per $100 of Payroll.		
								Bassic.	Assessed.	Required.
			$ c.	$ c.	$ c.	$ c.		$ c.	$ c.	$ c.
Sewers	*	1	22,114 23	6,866 80	.....	15,247 43	.69	Various	.....	.....
Bridge and Tower	*	2	19,361 71	4,303 57	4,503 18	10,554 96	.54	do.	.....	.....
Pile Driving	*	3	6,669 18	1,794 65	.....	4,874 53	.73	do.	.....	.....
House Wrecking	*	4	2,023 05	1,431 00	.....	592 05	.29	do.	.....	.....
General Construction	*	5	78,513 60	22,823 60	25,023 69	30,666 31	.39	do.	.....	.....
Power Line Installation	*	6	56,047 05	11,166 06	5,992 81	38,888 18	.69	do.	.....	.....
Railroads	*	7	96,549 49	34,920 84	21,822 93	39,805 72	.41	5 00	5 00	2 90
Street Grading	*	8	35,035 09	10,569 33	3,552 80	20,912 96	.42	Various	.....	.....
Ship Building	3	9	6,376 23	3,826 45	.....	2,549 78	.40	do.	.....	.....
Lumbering, Milling, etc.	7	10	324,102 86	206,146 50	117,366 32	590 04	.....	2 50	1 46	1 46
Dredging	4	12	6,576 00	1,895 25	.....	4,680 75	.71	5 00	1 67	0 48
Electric Systems	6	13	18,273 15	3,335 08	11,531 99	3,406 08	.18	4 00	2 00	1 62
Street Railway	3	14	26,728 89	6,731 06	1,263 73	18,734 10	.70	3 00	0 75	0 23
Telephone and Telegraph	3	15	4,311 09	1,469 74	690 74	2,150 61	.50	3 00	0 75	0 38
Coal Mining	6	16	82,398 83	40,816 61	28,041 23	13,540 99	.16	3 00	1 50	1 23
Quarries	4	17	15,354 77	5,500 35	2,330 28	7,524 14	.49	4 00	1 33	0 68
Smelters	4	18	6,368 70	4,938 55	.....	1,430 15	.21	3 00	1 00	0 77
Gas Works	6	19	7,138 14	917 16	2,923 38	3,297 60	.46	3 00	1 50	0 80
Steam Boats	6	20	1,252 18	405 00	.....	847 18	.67	3 00	1 50	0 48
Grain Elevators	3	21	8,385 45	4,780 78	.....	3,604 67	.43	2 00	0 50	0 29
Laundries	3	22	7,671 21	2,542 90	.....	5,128 31	.67	2 00	0 50	0 17
Water Works	6	23	5,037 41	844 96	2,739 26	1,453 19	.29	2 00	1 00	0 70
Paper Mills	9	24	8,084 75	5,975 25	.....	2,109 50	.26	2 00	1 50	0 74
Garbage Works	6	25	1,489 06	402 65	.....	1,086 41	.73	2 00	1 00	0 27
Wood Working	5	29	28,352 32	20,173 94	1,190 91	6,987 47	.24	2 50	1 04	0 79
Asphalt Manufacturing	3	30	971 50	.....	.....	971 50	1.00	2 50	0 62	.....
Cement Manufacturing	6	31	8,966 17	1,763 31	4,601 31	2,601 55	.29	2 50	1 25	0 89
Fish Canneries	3	33	11,289 16	2,089 30	.....	9,199 86	.81	3 00	0 75	0 14
Steel Mfg. Foundries	6	34	29,626 78	17,119 95	3,182 97	9,323 86	.31	2 00	1 00	0 70
Brick Manufacturing	3	35	6,216 34	1,805 65	.....	4,410 69	.71	2 00	0 50	0 13

Breweries	6	37	9,969 52	2,251 23	3,310 90	4,407 39	.44	2 00	1 00	0 56
Textile Manufacturing	3	38	3,812 52	1,185 35	.....	2,627 17	.68	1 50	0 38	0 12
Foodstuffs	3	39	2,656 01	597 48	.....	2,058 53	.77	1 50	0 38	0 09
Creameries	3	40	2,149 77	267 25	.....	1,882 52	.87	1 50	0 38	0 05
Printing	3	41	6,519 19	1,345 65	.....	5,173 54	.79	1 50	0 38	0 07
Longshoring	6	42	12,966 44	6,808 06	3,916 52	2,241 86	.17	3 00	1 50	1 25
Packing Houses	6	43	7,010 34	2,624 40	.....	4,385 94	.62	2 50	1 25	0 45
Ice Manufacturing	3	44	1,444 42	782 35	.....	662 07	.45	2 00	0 50	0 27
Theatre Stage Employees	3	45	445 14	.....	.....	445 14	1.00	1 50	0 37	.....
Powder Works	3	46	463 27	2,038 95	.....	1,575 68	Overdrawn	Overdrawn	Overdrawn	Overdrawn
Creosoting Works	3	47	632 44	186 55	.....	445 89	.70	2 50	0 61	0 18
Non-hazardous Elective	..	48	1,092 30	83 95	.....	1,008 35	.91	1 35	0 34	0 03
Totals	.....	.....	980,445 75	445,527 51	243,984 95	290,933 29	.....	.....	.....	.....

* Continuous.

APPENDIX XII.

DR. FRIEDENSBURG'S PAMPHLET.

Some newspaper attention has recently been attracted by a pamphlet[1] in which certain features of the German system of workman's insurance are adversely criticised. The pamphlet is the work of Dr. Ferdinand Friedensburg, a retired member of the governing body of the Imperial Insurance Department of Germany.

The pamphlet is remarkable if for no other reason, because it is the one dissenting voice in the chorus of the sometimes extravagant praise of the German insurance system. Dr. Friedensburg was originally appointed on the Senate of the Insurance Office as representative of the ultra-conservative element who were opposed on principle to the social insurance schemes; and he has, it appears, throughout his tenure of office maintained an attitude of critical dubiousness. The whole tone of the pamphlet though it undoubtedly contains much that is cogent and valuable, is one of caustic sarcasm not indicative of an unbiased disposition. It is in places marked by exaggeration and distortion of facts, bordering upon disingenuousness and appears to carry much less weight in the country of its origin than has been attributed to it by foreign reviewers.

The criticisms are of course not confined to the accident compensation system but apply to the whole German system of social insurance against accident, sickness and old age, with particular reference to the first two. Some of the criticisms referred to will therefore be found wholly or partially inapplicable to the accident compensation phase of the subject.

It is difficult to analyse Dr. Friedensburg's strictures into specific counts, but at the risk of imputing a definiteness which is wanting in the article itself, the following items may be extracted. It is said that the original object and intention of the system as expressed in the Imperial message establishing it, namely: to "Consolidate the economic forces of the nation by means of industrial association under state supervision" has not been realized in result.[2] On the contrary, it is intimated that the economic burdens imposed by the system tend to handicap German industry and commerce in its competition in the markets of the world.[3] The fear is expressed that in time of war or depression the burden of insurance may become ruinous.[4] The trade associations are said in some cases to be in a precarious financial footing, not maintaining adequate reserves. The administration of the system is said to engage an unduly large official staff and to involve an undue amount of clerical labour. The system is said to encourage litigation and to involve an excessive number of appeals. The chief complaint is against the spirit in which the system has been administered, and this complaint sums up and includes most of the others. It is asserted that in the effort to popularize the system and to placate the working classes the legal or juristic conception originally intended to be embodied in the system has been lost sight of. Those in charge of the administration are said to have shown too great solicitude on behalf of the claimants of benefits. Judicial officers have combined the functions of judge and advocate and are influenced by benevolent and philanthropic sentiment rather than by principles of justice. Humanitarian appeals in individual cases weighed strongly against broader considerations of equity and economy. Individual en-

[1] Praxis der deutschen Arbeiterversicherung (Berlin, 1911). Translation by Louis H. Gray, Workmen's Compensation and Information Bureau, New York.
[2] P. 9 (Gray, 24).
[3] P. 5 (Gray, 19).
[4] P. 6 (Gray, 20).

croachments are seized upon as precedents for general extension of pension rights; as a result, it is said that simulation, malingering, fraud and perjury have become so common as to demoralize the whole administration and the effect has been to pauperize the working population and to stifle thrift and enterprise.

In many particulars, the criticisms are inconsistent and self-contradictory, in other particulars they are manifestly untenable in the light of general knowledge. While it is deplored in one place that the benevolent attitude of the courts has made it almost impossible for a workman to fail in establishing his claim, in another place figures are cited showing that of the total number of claims only 16.7 are granted on application, and of the applications for revision in unsuccessful cases only 10.5 per cent. succeed.[1] Again Dr. Friedensburg expresses alarm at the growth of paternalism and bureaucracy while at the same time advocating the complete assumption by the State of the whole administration of the insurance system and the collection of the insurance fund through the medium of the state fiscal machinery. He admits that it was the intention that the State should make provision (*staatliche Fürsorge*) for workers who, through sickness, industrial accident, invalidity or old age, have become incapacitated,[2] and that the system was freed from all legal formalities and red tape[3]; yet he inveighs bitterly against the departure from the "juristic" conception of the insurance system and the informality of proceedings by which claims are established. The argument that insurance systems have militated against the success of German industry and commerce is refuted by the consensus of opinion amongst expert authorities in Germany and in foreign countries. This opinion is well expressed by Dr. Kaufman, President of the Imperial Insurance Office "The workers' lives preserved mean maintenance and increase of our national resources, and therefore give splendid returns for the heavy financial burdens which social insurance places upon economic structure. It is not an accident that the unprecedented expansion of German commerce and industry and the wonderful improvement in the economic welfare of the nation during the last twenty years has happened concurrently with thorough-going improvement in the condition of our workers. There is a close connection between the two events."[4]

The figures given by Dr. Friedensburg as to the number of officials engaged upon the system do not appear in the light of the population of Germany and the extent of the system to represent an excessively large administrative staff, and, it may be added, that with the exception of the more fully developed State's scheme suggested by Dr. Friedensburg himself, no other system of insurance would afford any superiority in this respect. Notwithstanding Dr. Friedensburg's criticisms insurance administration in Germany is admittedly the most efficient and economical known in the world.

As to the solvency of the trade associations it must be remembered that under the German system it is not necessary to set up reserves, but is sufficient to collect each year only enough to pay the year's pensions with a small margin for an emergency fund. As a matter of fact, it has been strongly protested that the margin regularly added to the amount required for the year's outlay has been too large. The accumulated reserves had in 1909 reached the immense sum of $540,000,000.[5]

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[1] P. 38 (Gray, 51).
[2] P. 1 (Gray, 15).
[3] P. 3 (Gray, 17).
[4] Schwedtman and Emery, Accident Prevention and Relief, page 38, and see similar expressions, Rep. Fed. Com. U.S.
[5] Schwedtman and Emery, Accident Prevention and Relief, pp. 38, 41.

In their general character the criticisms are anything but constructive and little or no attempt is made to point out remedies or alternatives; but a few constructive suggestions are made, and these, in the light of the general tenor of the pamphlet are of a surprising character. The conclusion of the whole argument is given in the following remarkable passage. "The system of workmen's insurance cannot be fully beneficial until, freed from all exaggeration, and in particular from conscious or unconscious subservience to the lower elements, it operates as a state institution unpartisan, as any other department of the state."[1] in another portion of the pamphlet he suggests that "A tax might have been levied far more cheaply nor would it have required the huge army of officials the intricate mechanism of administration or the costly system of vouchers and the like."[2]

But while there is little constructive criticism the writer is at pains to disavow opposition to the essential principles of the German system. Thus he states that it is far from his intention to say anything in opposition to the German social insurance legislation or its development.[3] Again, he says: "This does not imply that the Trade Associations should be abolished. That would be the most serious mistake that could be made for if anything has stood the test it has been the Trades Associations; and they are indispensable as constituting the most effective means of representation for that portion of the community which, notwithstanding the facility which their opponents display in manipulating their figures, bears by far the greatest portion of the cost of the insurance."[4] Even in the title of his pamphlet, Dr. Friedensburg guards himself by announcing his subject as the "praxis" as opposed to the theory or principles of the German system of insurance.[5] And this attitude is borne out in the discussion which is almost entirely a deprecation of the miscarriage of the original juristic conception which the law was intended to embody. The complaint is not against the law or the system but against the alleged compliant, class-serving and paternalistic spirit shown in its administration.

The chief and perhaps the only value of the article consists in its calling attention in an emphatic if hyberbolic manner to the dangers of allowing the administration of an insurance system to be controlled by short-sighted humanitarian and charitable sentiments. This may be evinced not only in the benevolent allowance of claims not strictly justified, but also by charitably relieving the workmen from participation in the cost. For Dr. Friedensburg does not confine his criticisms to the official and the workman. "Insurance was intended as a right which the insured was to help secure by his own efforts; in this way he was to be won to a participation in the thought and activity of the nation; he was to learn not to rely upon the help of others but rather to work out his destiny by his own efforts. With deliberate and well-considered purpose, therefore, the original draft of the sickness insurance law made it the duty of the employer to deduct half of his contribution to the insurance fund from the wages of the workmen. But in this instance it was the Reichstag itself, which, unable to do enough in its benignity and its craving for popularity changed the obligation into a mere authorization which to a large extent, has remained a dead letter. Of course,

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[1] P. 48 (Gray, 62). It is difficult to translate the force of the original: "Die Arbeiterversicherung kann nur dann segensreich wirken, wenn sie, losgellöst von allen übertriebungen, insbesondere von der bewuszten oder unbewuszten Liebedienerei nach unten, als eine Staatseinrichtung arbeitet, parteilos wie jede andere."

[2] P. 41 (Gray, 54).

[3] P. 6 (Gray, 20).

[4] P. 47 (Gray, 61).

[5] Dr. Gray has mistranslated this as "Practical Results."

the concept itself is not yet quite dead. Only recently, the Chamber of Commerce at Frankfort-on-the-Oder opposing a projected insurance law for private officials, has placed itself on record that: 'The assumption by the State of too large a responsibility in providing for its citizens involves the grave danger that individual responsibility, that powerful incentive to thrift and enterprise, may become gradually atrophied.'"[1] And of employers themselves the complaint is that "it has long since become the regular custom for masters—and their example has been followed by many other employers, especially in rural districts—to pay the full contributions towards the invalidity insurance of their insurance; and not to subtract the half as they may optionally do. Many indeed know of no other course; and many would even be ashamed to do it."[2]

Much more remarkable than the article itself is the attempt of the advocates of the system of individual employers' liability with voluntary insurance to use the pamphlet in support of their views, and as an exposé of the weakness of state insurance. The article is being quoted by representatives of the liability insurance interests in opposing the idea of state insurance. Used for this purpose the article is certainly a boomerang. In the first place, the German system of accident compensation is not a State insurance system, and in the second place, as has been pointed out, the strongest argument contained in the article is a plea for state insurance. Moreover, Dr. Friedensburg is most emphatic in disclaiming dissent from the underlying principles of the German system. He intimates that he would be a "blind fool" who would "fail to recognize that the blessings of the insurance system cannot be fully described even by the use of the customary expressions of unqualified laudation."[3]

The following letter by Dr. Zacher, the recognized authority on the German insurance system, is quoted from the brief presented to the Federal Commission on Workmen's Compensation by Mr. Ferdinand C. Schwedtman, on behalf of the National Association of Manufacturers of the United States, and probably represents with fair accuracy the views of those best in a position to estimate the force of Dr. Friedensburg's criticism:

BERLIN, April 19th, 1911.

My dear Mr. Schwedtman,

In reply to your favours of March 31st, and April 7th, I beg to send you herewith the desired particulars of Dr. Friedensburg. His statement must not be taken too seriously. Dr. Friedensburg has been generally known even during his active connection with the Imperial Insurance Department as the solitary advocate of extreme tendencies. His present articles show an unwarranted tendency to condemn a great national, social insurance system on account of a few shortcomings in some of its details. That any system, covering by compulsion nearly all of the working population of a nation, has some faults, especially at the beginning, is natural, and I have long ago called attention to them in my works on social insurance but have at the same time pointed out their remedies.

While I have the highest regard for the sense of justice and fairness of Dr. Friedensburg, who for many years was my associate in office; I know that there is no foundation for his accusation on the part of the German Imperial Department in favour of the wage workers. The labour press has in recent years with equal lack of reason accused this department of the opposite tendency—that is, of injustice to the wage-worker.

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[1] P. 41 (Gray, 54).
[2] P. 40 (Gray, 54).
[3] P. 46 (Gray, 60).

Surely there can be no reasonable talk of a deficit actuarial or otherwise, or of financial difficulties in our insurance system, in view of an accumulated reserve fund of $500,000,000, especially if our insurance laws continue to be carried out properly, and every abuse continues to be promptly and effectually met. I am of the opinion that a compulsory national insurance system does not require the complicated method of figuring in advance exact final costs which of course must be part of a voluntary insurance system, but remains always a factor of uncertainty.

Men sufficiently familiar with this subject to judge are unanimous in pronouncing the underlying principles of the German insurance system thoroughly sound, and in declaring the system a wonderful factor in establishing for the whole nation a higher level in culture and industrial efficiency. Practically every one agrees that the shortcomings of our insurance system are extremely small in comparison with its wonderful advantages and especially in the compulsory feature responsible for a growing spirit of thrift and economy which is full of importance and promise for the future of the nation.

Wishing the National Association of Manufacturers a successful annual convention, I remain,

Sincerely yours,

DR. ZACHER,
Director German Imperial Statistical Department.

INDEX.